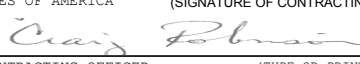


<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30				1. REQUISITION NUMBER SEE SCHEDULE		PAGE 1 OF 57	
2. CONTRACT NO. DAMT01-02-D-0022-P00004		3. AWARD/EFFECTIVE DATE 30-Nov-2001		4. ORDER NUMBER		5. SOLICITATION NUMBER DAMT01-01-R-0188	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME JAMES WASHINGTON (MTAQ-JI)				b. TELEPHONE NUMBER (No Collect Calls) 703-428-3204	
9. ISSUED BY MILITARY TRAFFIC MANAGEMENT COMMAND MTAQ-J GLOBAL INTERMODAL ACQUISITION DIV 200 STOVALL STREET ALEXANDRIA VA 22332-5000  TEL: 703-428-3204 FAX: 703-428-3362		CODE MT01B8		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100% FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A)  SIC: 4412 SIZE STANDARD: 500		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  13b. RATING  14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	
15. DELIVER TO  <b>SEE SCHEDULE</b>		CODE		16. ADMINISTERED BY PARC MTAQ- MIL TRAFFIC MGT CMD 200 STOVALL ST, 12S67 ALEXANDRIA VA 22332-5000			
17a. CONTRACTOR/ OFFEROR SEALIFT, INC. 68 WEST MAIN STREET OYSTER BAY NY 11771  TEL.		CODE 1C9M8		18a. PAYMENT WILL BE MADE BY DBOF-T DFAS-OM/FPB-MTMC PO BOX 7020 BELLEVUE NE 68005-1920		CODE DBOF-T	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/ SERVICES		21. QUANTITY		22. UNIT	
		<b>SEE SCHEDULE</b>					
25. ACCOUNTING AND APPROPRIATION DATA <b>See Schedule</b>		26. TOTAL AWARD AMOUNT <b>\$6,638,983.14</b>					
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED.				ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED.				ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <input checked="" type="checkbox"/> TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 				31c. DATE SIGNED 30-Nov-2001	
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) CRAIG ROBINSON / CONTRACTING OFFICER TEL: 703-428-2068 EMAIL: RobinsonCraig@mtmc.army.mil			
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED		33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER		35. AMOUNT VERIFIED CORRECT FOR	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		40. PAID BY	
				42a. RECEIVED BY (Print)			
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)  
Prescribed by GSA  
FAR (48 CFR) 53.212

## Section SF 1449 - CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Antigua and Ascension Island Initial Base Year FFP	1.02	Years	\$6,508,807.00	\$6,638,983.14
	Antigua and Ascension Island Dedicated Ocean Shipping Contract. Ocean and Intermodal Services between U.S. East Coast and the Ascension Island.				
	Period of performance from 1 MAR 2002 through 28 FEB 2003				
	P00003 Extend period of performance from 1 Mar 2003 through 31 May 2003				
	PURCHASE REQUEST NUMBER: W81GYE 11226000				

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NET AMT

\$6,638,983.14

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Ascension Island First Year Option FFP	1	Years	\$5,264,588.00	\$5,264,588.00
OPTION	Ascension Island Dedicated Ocean Shipping Contract. Ocean and Intermodal Services between U.S. East Coast and the Ascension Island.				
	Period of performance from 1 JAN 2003 through 31 DEC 2003				
	PURCHASE REQUEST NUMBER: W81GYE 11226000				

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NET AMT

\$5,264,588.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		1	Years	\$5,411,629.00	\$5,411,629.00
OPTION	Ascension Island 2nd Year Option FFP Ascension Island Dedicated Ocean Shipping Contract. Ocean and Intermodal Services between U.S. East Coast and the Ascension Island. Period of performance from 1 JAN 2004 through 31 DEC 2004 PURCHASE REQUEST NUMBER: W81GYE 11226000				

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NET AMT	\$5,411,629.00
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FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004		1	Years	\$5,574,590.00	\$5,574,590.00
OPTION	Ascension Island 3rd Yr Option FFP Ascension Island Dedicated Ocean Shipping Contract. Ocean and Intermodal Services between U.S. East Coast and the Ascension Island. Period of performance from 1 JAN 2005 through 31 DEC 2005 PURCHASE REQUEST NUMBER: W81GYE 11226000				

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NET AMT	\$5,574,590.00
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FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005		1	Years	\$5,715,885.00	\$5,715,885.00
OPTION	Ascension Island 4th Yr Option FFP Ascension Island Dedicated Ocean Shipping Contract. Ocean and Intermodal Services between U.S. East Coast and the Ascension Island. Period of performance from 1 JAN 2006 through 31 DEC 2006 PURCHASE REQUEST NUMBER: W81GYE 11226000				

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NET AMT	\$5,715,885.00
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FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006			Months	\$0.00	\$0.00
	Antigua 2002 (5 months) FFP The projected total cost is for a five (5) months period. PURCHASE REQUEST NUMBER: W81GYE2220-6001				

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NET AMT	\$0.00
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FOB: Destination

## INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	N/A
0002	N/A	N/A	N/A	N/A
0003	N/A	N/A	N/A	N/A
0004	N/A	N/A	N/A	N/A
0005	N/A	N/A	N/A	N/A
0006	N/A	N/A	N/A	N/A

## DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 01-MAR-2002 TO 28-FEB-2003	N/A	N/A FOB: Destination	
0002	POP 01-JAN-2002 TO 31-DEC-2002	N/A	N/A FOB: Destination	
0003	POP 01-JAN-2004 TO 31-DEC-2004	N/A	N/A FOB: Destination	
0004	POP 01-JAN-2005 TO 31-DEC-2005	N/A	N/A FOB: Destination	
0005	POP 01-JAN-2006 TO 31-DEC-2006	N/A	N/A FOB: Destination	
0006	POP 19-AUG-2002 TO 28-FEB-2003	N/A	N/A FOB: Destination	

## ACCOUNTING AND APPROPRIATION DATA

AA: 97X4930.FD30 35 7700 4100 71000 529 W81GYE11279001 S28113 CN:1325  
 COST 000000000000  
 CODE:  
 AMOUNT: \$25,163,824.00

AB: 97x4930 FD30 35 7700 S390 71150 0000529 W81GYE21689001A 002290 S28113  
 COST 000000000000  
 CODE:  
 AMOUNT: \$500,000.00

AC: 97X4930 FD30 35 7700 S390 71150 0000529 S39077 W81GYE21689001A 002290 S28113  
 COST 000000000000  
 CODE:  
 AMOUNT: \$8,000,000.00

## CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	MAY 2001
52.203-3	Gratuities	APR 1984
52.203-6	Restrictions On Subcontractor Sales To The Government	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997

52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.212-2	Evaluation - Commercial Items	JAN 1999
52.215-11	Price Reduction for Defective Cost or Pricing Data-- Modifications	OCT 1997
52.216-1	Type Of Contract	APR 1984
52.222-35	Affirmative Action For Disabled Veterans And Veterans of the Vietnam Era	APR 1998
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.227-1	Authorization and Consent	JUL 1995
52.242-15	Stop-Work Order	AUG 1989
52.242-17	Government Delay Of Work	APR 1984
52.245-1	Property Records	APR 1984
52.248-1	Value Engineering	FEB 2000
52.252-2	Clauses Incorporated By Reference	FEB 1998
252.203-7002	Display Of DOD Hotline Poster	DEC 1991
252.204-7000	Disclosure Of Information	DEC 1991
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Required Central Contractor Registration	MAR 2000
252.205-7000	Provisions Of Information To Cooperative Agreement Holders	DEC 1991
252.209-7000	Acquisition From Subcontractors Subject To On-Site Inspection Under The Intermediate Range Nuclear Forces (INF) Treaty	NOV 1995
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country	MAR 1998
252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DOD Contracts)	APR 1996
252.223-7002	Safety Precautions For Ammunition And Explosives	MAY 1994
252.223-7003	Changes In Place Of Performance--Ammunition And Explosives	DEC 1991
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	APR 1993
252.228-7006	Compliance With Spanish Laws and Insurance	DEC 1998
252.242-7000	Postaward Conference	DEC 1991
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	MAR 2000
252.246-7000	Material Inspection And Receiving Report	DEC 1991
252.247-7023	Transportation of Supplies by Sea	MAR 2000
252.247-7024	Notification Of Transportation Of Supplies By Sea	MAR 2000

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (MAY 2001)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting for the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any

United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58,



Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

#### 52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1 FEU or MsT, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of the capacity of the carriers vessel;

(2) Any order for a combination of items in excess of the capacity of the carriers vessel ; or

(3) A series of orders from the same ordering office within 3 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within one

(1) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in attachment 1 as the "maximum". The Government shall

order at least the quantity of supplies or services designated in attachment 1 as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the completion of any sailing booked prior to the completion date of the contract.

(End of clause)

#### 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

(End of clause)

#### 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 6 month (insert the period of time within which the Contracting Officer may exercise the option); provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days (60 days unless a different number of days is inserted) before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

(End of clause)

#### 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

(a) Definition.

"Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

#### 252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (DEC 2000)

(a) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

- ☐ N/A 252.205-7000 Provision of Information to Cooperative Agreement Holders (10 U.S.C. 2416).
- ☐ N/A 252.206-7000 Domestic Source Restriction (10 U.S.C. 2304)
- ☐ N/A 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (15 U.S.C. 637).
- ☐ N/A 252.225-7001 Buy American Act and Balance of Payment Program (41 U.S.C. 10a-10d, E.O. 10582).
- ☐ N/A 252.225-7007 Buy American Act--Trade Agreements--Balance of Payments Program ☐ Alternate I (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).
- ☐ N/A 252.225-7012 Preference for Certain Domestic Commodities.
- ☐ N/A 252.225-7014 Preference for Domestic Specialty Metals (10 U.S.C. 2241 note).
- ☐ N/A 252.225-7015 Preference for Domestic Hand or Measuring Tools (10 U.S.C. 2241 note).
- ☐ N/A 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (☐ Alternate I) (Section 8064 of Pub. L. 106-259).
- ☐ N/A 252.225-7021 Trade Agreements ☐ Alternate I (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- ☐ N/A 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779).
- ☐ N/A 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755).
- ☐ N/A 252.225-7029 Preference for United States or Canadian Air Circuit Breakers (10 U.S.C. 2534(a)(3)).
- ☐ N/A 252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payment Program (☐ Alternate I) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- ☒ 252.227-7015 Technical Data--Commercial Items (10 U.S.C. 2320).
- ☒ 252.227-7037 Validation of Restrictive Markings on Technical Data (10 U.S.C. 2321).
- ☒ 252.243-7002 Certification of Requests for Equitable Adjustment (10 U.S.C. 2410).
- ☒ 252.247-7023 Transportation of Supplies by Sea (☐ Alternate I) (☐ Alternate II) (10 U.S.C. 2631).
- ☒ 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(b) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (Federal Acquisition Regulation 52.212-5),

the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631). 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)

(End of clause)

## PBSW

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## **1.0 INTRODUCTION/BACKGROUND**

### **1.1 Streamlined, Performance-Based Process**

The Military Traffic Management Command has streamlined the processes involved in soliciting, evaluating, awarding and administering contracts for Intermodal Sealift. The process maintains a competitive environment, while considering the needs of both customers and suppliers, focuses on reducing costs and implementing performance-based contracts.

## **2.0 SCOPE**

### **2.1 Transportation Services**

The Contractor, a vessel operating ocean Carrier, shall provide transportation of lawful cargo by U.S. flag ships between points in the Continental United States of America (CONUS) as specified in CARE –SM II and Detachment 2-45th OG at Ascension Island, South Atlantic. The Carrier shall maintain regularly scheduled liner term service on this route throughout the period of the Contract via a self-sustaining geared vessel(s). The Carrier shall provide both breakbulk and intermodal container service, including terminal handling, all stevedoring, loading and discharging in CONUS. The minimum acceptable frequency of service shall be a vessel call at Ascension Island at intervals not to exceed sixty (60) days between deliveries. Actual cargo transit time will not exceed fifteen (15) days from the CONUS port of loading to Ascension Island. Transit time from Ascension Island to the CONUS port of discharge shall be in sufficient time to permit normal discharge of retrograde cargo and subsequent vessel loading to maintain the required fixed day sailing from CONUS for the established service frequency interval. For inbound cargo, inland cargo delivery transit after port clearance (commencement of delivery) shall not exceed one day. The Carrier will carry any and all cargoes offered by the Government up to the capacity of the vessels offered for use in this trade, with the exception of those limitations of the Carrier's obligations specified in the Other Provision Section 4.6. The minimum space available to the Government for each outbound (CONUS to Ascension Island) or inbound (Ascension Island to CONUS) sailing shall be no less than eighty-five (85) 20' containers, of which a minimum of fourteen (14) spaces must be capable of accepting 20' refrigerated containers; and 2000 square feet of protected breakbulk/vehicle stowage. The Carrier shall establish and maintain a fixed day service. In the case of the minimum requirement of 60 days between delivery, the vessel shall depart the last CONUS port no earlier than 1800 hours on the first Wednesday of January 2002 with arrival at Ascension Island no later than 15 days thereafter. Subsequently, CONUS departures shall occur at two month intervals on the first Wednesday of the month with departure from the last CONUS port no earlier than 1800 hours local time. In the event of the acceptance of a more frequent service, such service shall be established on a fixed day CONUS departure schedule (e.g., Wed. at six-week intervals) with the approval of the Contracting Officer. Such fixed day schedule shall be maintained for the base period and any options periods exercised, of the contract unless the Contracting Officer approves a change.

#### **2.1.1 Antigua Transportation Services**

The Contractor, a vessel operating ocean Carrier, shall provide transportation of lawful cargo by U.S. flag ships between points in the Continental United States of America (CONUS) (specified in CARE –SM II), Port of Embarkment of Cape Canaveral and Antigua. The Carrier shall maintain regularly scheduled door-to-door liner term service on this route throughout the period of the Contract via a self-sustaining geared vessel(s). The Carrier shall provide both breakbulk and intermodal container service, including terminal handling, all stevedoring, loading, to include all pilots' fees, warfage, port charges, and line haul to the Antigua Air Station and CONUS. The minimum acceptable frequency of service shall be a vessel call at Antigua at intervals not to exceed sixty (60) days between deliveries. Actual cargo transit time will not exceed eighteen (18) days from the Cape Canaveral to Antigua.

## **2.2 DESCRIPTION OF ANTIGUA ISLAND**



**2.2.1 Physical Characteristics:** Antigua is located in the northeastern part of the island of Antigua in the Leeward Islands of the West Indies, 1,250 nautical mile southeast of Cape Canaveral.

**2.2.2 Port operations:** Port operations are provided by commercial port agents. Normal base support services at Antigua AS are performed by the Range Contractor, which includes logistics and transportation. Appropriate equipment is available on the air station for discharge and loading operations.

The general scope of services under this RFP includes:

- Ocean Transportation
- Related Intermodal movements and services
- Management Expertise

## **2.3 CARGO**

**2.3.1 Cargo.** Types of cargo to be carried are military cargo, mail, and any other cargo shipped by the Department of Defense (DoD) in the Defense Transportation System (DTS). All cargo shall be stowed to prevent damage due to exposure to the elements. Above deck fixed structures which prevent damage due to exposure of elements may be provided.

**2.3.2 Carriage.** Cargo will be loaded and discharged by the carrier at terminal(s) at the carrier's CONUS port of call. The Carrier shall furnish all containers unless Government owned containers are to be transported. Consistent with vessel safety, when on deck stowage is necessary, containers with mail and personal property will, to the maximum extent possible, be loaded on the bottom tier.

## **2.4 Reserved**

## **2.5 VOLUNTARY INTERMODAL SEALIFT AGREEMENT (VISA) PROGRAM**

**2.5.1** In compliance with the U.S. Cargo Preference Act of 1904 (10 U.S.C. 2631), U.S. flag Carriers will be given preference for award of contracts resulting from this solicitation. MTMC recognizes the continuing need for a formalized program for the acquisition of sealift augmentation under less than full mobilization. Enrollment of a Carrier's U.S. flag fleet in an authorized sealift readiness program establishes an award preference for participants under this procurement. The Sealift Readiness Program (SRP), implemented in Fiscal Year (FY) 1970, provided a formal agreement between the U.S. flag ocean Carriers and the Government for the acquisition of ships and related equipment under less than full mobilization. On January 30, 1997, the Secretary of Defense (SECDEF) approved the Voluntary Intermodal Sealift Agreement (VISA) as an alternative to the SRP for the purposes of Section 909 of the Merchant Marine Act of 1936. VISA also satisfied the requirement of Section 653 of the Maritime Security Act (PL 104-239) for an Emergency Preparedness Program approved by the SECDEF.

**2.5.2** VISA provides for three, time-phased stages of activation for a contingency. Each stage will be activated, as needed, to support contingency operations. VISA Stages will be activated by United States Transportation Command (USTRANSCOM) with SECDEF approval. Stage I would be implemented at the beginning of a contingency to meet early DoD surge, sustainment, and ammunition movement requirements that could not be met with organic and voluntary capacity. Stage I activation would potentially cause the most immediate and potentially severe disruption to a Carrier's peacetime service. Stage II would be activated with an expectation of less impact on peacetime commercial service when contingency requirements exceed the capability of Stage I plus any additional voluntarily committed resources. Stage III provides for additional capacity to DoD when Stages I and II commitments and volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-Participants are not available through established DoD contracting practices or U.S. Government treaty agreements. Once Stage III is activated, SECDEF will request the Secretary of Transportation (SECTrans) to allocate sealift capacity based on DoD requirements in accordance with Title I of The Defense Production Act of 1950 and implementing regulations.

2.5.3 For contract awards and resultant cargo bookings, VISA participants will receive preference over non-VISA participants, in accordance with the VISA participant categories described below. As a condition of such award preference, each Participant in the VISA program must remain in good standing during the entire period of the contract and maintain its level of commitment as detailed on JTMO Form 4280/9. The volume of peacetime cargo offered to the contractor is a function of the contractor's commitment of U.S. flag ocean vessels and intermodal service capacity under the terms and conditions of the VISA which are incorporated herein. A Carrier unable or unwilling to maintain its VISA commitment in terms of specific vessel capacity as reflected in its JTMO FORM 4280/9, Voluntary Enrollment Contract (VECH), must notify the PCO immediately. Upon such notification, the Government reserves the right to negotiate an equitable adjustment or to exercise other contractual remedies as appropriate.

NOTE: The expression "United States Flag Fleet" as U.S. Flag ships and U.S. Flag vessels herein refers only to the dry cargo vessels and tug/barge combinations in the Carrier's United States Fleet.

2.5.4 VISA Booking Priority. In accordance with the Voluntary Intermodal Sealift Agreement (VISA), the following categories of VISA participant status shall be applied in descending order, when booking cargo shipments in the Defense Transportation System. The following priority order applies to each individual Route contained in this contract.

- (a) U.S. Flag vessel capacity operated by a VISA "Participant" that has made a current, minimum commitment of its U.S. Flag vessel capacity to Stages I, II and III of VISA OR that has made a current, minimum commitment of its Jones Act capacity (capacity exclusively engaged in the domestic trades) to Stage III of VISA and a current, minimum commitment of the remainder of its U.S. Flag vessel capacity to Stages I, II and III of VISA OR, with regard to an offer for a long-term charter to DoD, that has made a current, minimum commitment of its U.S. Flag vessel capacity to Stage III of VISA. The U.S. Flag Vessel Sharing Agreement (VSA) capacity of such a Participant also is grouped in this category of priority.
- (b) U.S. Flag vessel capacity operated by a VISA "Participant" that has made a current, minimum commitment of its U.S. Flag vessel capacity to Stage III of VISA and the U.S. Flag Vessel Sharing Agreement (VSA) capacity of such a Participant.
- (c) U. S. Flag vessel capacity operated by a non-Participant.
- (d) Combination U.S./foreign flag vessel capacity operated by the kind of "Participant" described in paragraph (a) above and/or the combination U.S./foreign flag VSA capacity of such a Participant.
- (e) Combination U.S./foreign flag vessel capacity operated by the kind of "Participant" described in paragraph (b) above and/or the combination U.S./foreign flag VSA capacity of such a Participant.
- (f) Combination U.S./foreign flag vessel capacity operated by a non-Participant.
- (g) U.S. owned or operated foreign flag vessel capacity and/or VSA capacity of the kind of "Participant" described in paragraph (a) above.
- (h) U.S. owned or operated foreign flag vessel capacity and/or VSA capacity of the kind of "Participant" described in paragraph (b) above.
- (i) U.S. owned or operated foreign flag vessel capacity and/or VSA capacity of a non-Participant.

- (j) Foreign-owned or operated foreign flag vessel capacity of a non-Participant.
- (k) If a particular shipment's requirements cannot be met by any of the booking priority categories above, then MTMC shall have the right to solicit additional service under commercial tariffs using Government Bills of Lading or another FAR contract utilizing all sources of common carriage.

## 2.6 CONTAINER SERVICE

### 2.6.1 Service

**2.6.1.1 Basic Service** The Carrier's basic container service shall consist of furnishing to the government, a clean, dry, empty, odor free, structurally sound container on a chassis at a specific point designated by the Government (within the general locations set forth in CARE-SM II System); moving the stuffed container between this point and the Carrier's CONUS commercial terminal; receiving and handling the stuffed container at its loading terminal; loading and transporting the container in the Carrier's vessel; discharging and handling the container at the Carrier's CONUS receiving terminal, including all aspects of Customs clearance; delivery as ordered by the OO. CONUS outbound service shall be liner in/free out (LIFO); CONUS inbound service from Ascension Island shall be free in/liner out (FILO).

**2.6.2 Spotting Empty Containers.** The Ordering Officer (OO) will provide the Carrier at least two working days notice as to where to spot an empty container unless a shorter notice is agreed upon by the carrier. The notice will include the type, size (LxWxH), and capacity of container required, the name and address of the shipper, the date and a specific time for spotting the container, which will not be later than three working days prior to the vessel cut-off date unless a shorter period is agreed upon by the carrier, and will specify the categories of cargo to be stuffed in container (i.e., General Cargo, Mail/Mail Equipment, Vehicles, or Refrigerated Cargo). The Carrier shall spot the empty container within a delivery window of not later than or prior to one hour of the stated time in the notice.

**2.6.3 Container Pickup.** The Carrier shall pick-up and remove a container from the Government facility as follows:

Stuffed container(s) within 20 hours; and  
Empty container(s) within 72 hours.

Pickup time provisions shall commence at 0800 hours on the day following carrier's receipt of notification that the container is in all respects ready to be transported, unless this requirement is waived by the OO. Time shall not run during Saturdays, Sundays, and locally observed holidays. For Ascension Island, the carrier shall pick up and remove from previous sailing all empty containers after discharging inbound containers. In no case should empty containers remain beyond the next sailing date.

**2.6.4 Chassis Requirement.** Containers delivered to the Government shall be on chassis, which shall remain with the containers (while they are in the custody of the Government) unless this requirement is waived by the OO. Chassis provided by the Carrier shall be compatible with Government contractor-furnished tractors unless this requirement is waived by the OO. In Ascension Island, the Contractor must provide minimum appropriate spreader bars and other container handling equipment to accommodate Government loading and discharging.

**2.6.5 Empty Containers.** When the Government requires stuffing at a place not set forth in CARE-SM II System, the Carrier shall make empty containers on chassis available at its terminal. Line-haul from the commercial terminal to the place of stuffing and return of stuffed container to the Carrier's terminal shall be arranged by Carrier and linehaul charges shall be in accordance with mileage band rates set forth at schedule at CARE-SM II System.

### 2.6.6 Inland Delivery

**2.6.6.1 CONUS Basic Service.** The Carrier shall contact the consignee to establish a delivery time. Unless delay is requested by the OO, the Carrier, after the discharge of the container from the vessel, will commence inland

transportation within two (2) working days of discharge for containers loaded with dry cargo. Vehicles in containers will be delivered within forty-eight (48) hours after the container has been discharged from the vessel. Upon delivery, the Carrier will present the consignee with a delivery receipt designating: destination warehouse, pieces, weight, cube, description of cargo, and TCN for the container.

#### 2.6.7 Accessorial Services.

##### 2.6.7.1 Reserved.

2.6.7.2 Flatrack Service. - The Carrier offers a lumpsum flatrack surcharge which guarantees the Government for each vessel sailing, the number of flatracks the Government requires, provided the requirement is given to the carrier by the OO at least two weeks prior to the intended sailing of the Carrier's vessel. The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System of the contract.

2.6.7.3 – Stuffing Service – The Carrier's stuffing service shall consist of receiving at its terminals cargo suitable for containerization, and the consolidating, segregating, tallying and stuffing the cargo into containers and sealing the containers. The integrity of cargo units delivered to the carrier for stuffing shall be maintained throughout the shipment consistent with the stowage capability of the carriers containers. The Government will pay for such services at the rate set forth in CARE-SM II System, per measurement ton of cargo stuffed into a container. Carrier shall immediately notify the OO of shipments arriving carrier's terminal for stuffing that are found damaged or not suitable for containerization. Cargo arriving from vendors on prelude arrangements without a DD Form 1149, will not be accepted for stuffing. Carrier will provide OO a tally sheet reflecting the contents of stuffed containers indicating pieces, weight, cube, assigned Transportation Control Numbers (TCN's), and seal number for each container stuffed. Affix military shipping label and packing lists provided by the OO.

2.6.7.4 - Stripping, Sorting and Consolidation – When ordered by the Government, the carrier's stripping, sorting and consolidation service shall consist of unstuffing, separating cargo by consignee, and grouping cargo lots by consignee at carrier's terminal for pickup by the consignee or by an inland carrier for further transportation. For import household goods in lift vans, the stripping service will include placing the lift vans on the inland carrier truck or trailer.

2.6.7.5 – Transloading – The Government may deliver or cause to be delivered to the carrier at the carrier's East Coast terminal port of loading, cargo in Government owned or other carrier owned equipment for transloading. The carrier will assume responsibility of transloading such cargo into its own containers. The Government will pay for such services at the rates (per measurement ton) of cargo set forth in CARE-SM II System.

2.6.7.6 – Shipping of POV's (Military Member or Dependent of Military Member ONLY). The booking of POV's with the contractor is premised on the ability of the contractor to achieve the RDD associated with each individual POV. The ability of the contractor to achieve the POV RDD is determined by reference to the Assured Ocean Transit, Inland Delivery, and other time period provided herein concerning the overall movement of cargo from the time it is tendered to the contractor by the Government at origin until it is delivered at the designated destination in the booking shipping order. In accepting a POV booking/shipping order, the contractor warrants that it can achieve delivery of the POV by the designated RDD under the terms and conditions of this contract. If the contractor fails to deliver a POV on or before the RDD, the Contracting Officer shall assess \$30.00 damages per diem against the contractor. Damages shall be assessed for each day that the delivery exceeds the RDD, including day of delivery, up to a maximum period of seven calendar days (maximum contractor liability of \$210.00 per POV). The contractor may be exonerated from this liability only under circumstances constituting Force Majeure or Excusable Delay (FAR 52.249-8 entitled Default (Fixed Price Supply and Service) Alternate I (APR84)). The contractor is at all times required to deliver the POV as soon as possible following the conclusion of any Force Majeure or Excusable Delay circumstance. If the failure to achieve delivery by the RDD is partially excused, damages shall be assessed on a pro-rata basis. The contractor bears the burden of establishing exoneration on the basis of any Force Majeure or Excusable Delay circumstance."

#### 2.6.8 Refrigerated Containers.

2.6.8.1 General. Self-sustaining refrigerated containers not more than two years old, preferably at contract service inception but in no case longer than 120 days after contract service inception, shall be provided by the Contractor for this service. Such containers shall be in good working order and delivered to the stuffing activity precooled to the intransit temperature specified by the Government. Such containers shall be maintained at an internal temperature within two (2) degrees Fahrenheit of the specified intransit temperature from the time of initial stuffing until unstuffed at final destination. For Chilled Cargo in refrigerated containers only, the intransit temperature specified in the booking/shipping order for service shall be maintained by the Carrier at an internal temperature within plus or minus two (2) degrees Fahrenheit of the specified temperature from the time of initial stuffing until unstuffing at final destination providing that such variance does not allow cargo freezing. Carrier must have the reefers delivered to the load port five days prior to vessel arrival for stuffing. Reefers will be loaded on the vessel last and offloaded first at Ascension Island. While the remainder of vessel is discharged at Ascension, reefers will be unstuffed and reloaded to the vessel prior to vessel's departure from Ascension Island.

2.6.8.2 Carrier Inspection of Contents. Upon receipt, the Carrier may open stuffed reefer containers to inspect the condition, stuffing, or the temperature of the cargo. When the Carrier is of the opinion that the cargo is unsuitable for shipment to the specified destination, the Carrier shall immediately advise the OO of such condition, and request a written decision regarding shipment of the container.

2.6.8.3 Temperature Recording. The Carrier shall furnish two operable continuous temperature recording instruments (to include at least one interior Ryan type recorder or equivalent and one exterior recorder), in each refrigerated container ordered. These instruments shall measure and record in a legible manner any variation in temperature of one degree Fahrenheit or more inside the container during the time it is stuffed with cargo. The original printed records of the temperature maintained during the transit from origin to destination shall be made available for inspection by the receiving activity when the container is delivered. Upon request of the consignee, a copy of the original records shall be provided to the receiving activity within 5 days.

2.6.8.4 Maintenance. It is the sole responsibility and cost of the Carrier to maintain its refrigerated container equipment in good working order. Reefers must arrive inspected and certified the capability of operating at 220 and 440 electrical volts with separate wires and plugs for reefers.

2.6.9 Hazardous Waste Material - Carrier shall provide 20ft empty containers at the Ascension Island for hazardous waste material required to be shipped inbound to CONUS (Port Canaveral, FL). The material may consist of, but is not limited to, antifreeze, soil, asbestos, corrosive liquid and solids, poly-chlorinated biphenyl (PCB)'s, regulated and non-regulated flammables, and oils and lubricants. The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System of the contract.

## **2.7 RESERVE**

## **2.8. BREAKBULK SERVICE**

2.8.1 Basic Service. The Carrier's breakbulk service shall consist of receiving cargo at a specific point designated by the Government; transporting the cargo between this point and the Carrier's commercial terminal; loading in CONUS; transporting both outbound and inbound breakbulk cargo in its vessel; discharging the cargo at its receiving terminal in CONUS; and delivery in CONUS as ordered by the OO. Breakbulk service shall be provided in accordance with the terms and conditions for containerized service, as applicable.

## **2.9. DOCUMENTATION**

2.9.1 Load Port. The Carrier shall provide (by mutually agreeable means) the cognizant MTMC activity and the activity responsible for cargo documentation with the following information in connection with cargo loaded at each port.

2.9.1.1 Container Receipt Information. Container receipt information shall consist of carrier name, port of loading, date container received at port, container number with ALPHA prefix, TCN, and seal and/or keyless lock number. This data shall be provided within four working hours of container receipt by the carrier.

2.9.1.2 Cargo Receipt. The Master shall sign the manifest or receipt acknowledging receipt of the cargo in apparent good order and condition or he/she shall record thereon any apparent damage to or shortage of such cargo or any other specific exception to the cargo as listed on the manifest or receipt. For containerized cargo both received by the Carrier and delivered at destination under seal, the Master's receipt acknowledges only the apparent good order of the container.

2.9.1.3 Container Lift Information. Container lift information shall consist of: name of vessel and voyage document number, container number with ALPHA prefix, TCN, port of discharge, final destination, general description of container contents (i.e., general cargo, mail/mail equipment, POV, other vehicles, refrigerated cargo), and seal and/or keyless lock number). This data shall be provided within eight working hours after vessel departure.

Note: If a seal on any container has been broken and/or replaced while in the Carrier's custody, the Carrier shall notify the OO with a complete report as to the circumstances and the reasons therefor.

2.9.1.4 Discrepancy Report. The Carrier shall provide both the cognizant MTMC activity and local activity responsible for cargo documentation a listing by container number and TCN of containers which were booked but not loaded, or loaded but not booked, and the reasons why the containers missed their designated scheduled sailing. Such notification shall not relieve the Carrier of its obligations under this Contract to fulfill the original cargo booking commitments. Such reports, shall be furnished within eight hours after vessel departure.

2.9.2 Discharge Port. The Carrier shall provide either Ascension Island Shipping and Receiving or the MTMC activity having cognizance over the port with a discharge report. This report shall be provided for each container discharged as soon as practicable after discharge, but not later than twenty-four (24) hours after discharge.

2.9.3 Prestow Plan. The Contractor shall provide the Government with two copies of a cargo prestowage plan at least 48 hours prior to the scheduled arrival of the vessel (plus 24 hours for each Sunday or locally observed holiday that occurs on the day of arrival or the two days preceding the day of arrival) at the loading port indicating the specific location, pertinent dimensions and total cubic measurement of the spaces available for loading the cargo booked at that port. Such cargo prestowage plan will be based on information contained in the cargo documentation previously supplied to the Carrier by the Government. One copy of the cargo prestowage plan shall be furnished to the Ordering Activity and one copy shall be furnished to the Water Terminal Authority having cognizance over that loading port. At the same time, the Carrier shall furnish the Ordering Activity confirmation of the date and time that the vessel will be placed on loading.

2.9.4 Operational Reports. The Carrier shall provide notice within twenty-four (24) hours to both the Contracting Officer and the OO of any operational shortfall that occurs relative to the service. Examples of operational shortfalls include sailing delays, container unavailability, strikes, receiving delays, port backlogs and equipment failures such as ship cranes etc.

2.9.5 Vessel Schedule. The Carrier shall provide an updated sailing and arrival schedule to MTMC every 90 days through the life of the Contract. Any change to the projected schedule must be reported within seven (7) days of the next scheduled port call. Further, the Carrier shall notify the Government activity having cognizance over each port where Government cargo is to be discharged under this Contract of the impending arrival of the vessel. Such notice shall be given at least 48 hours prior to arrival indicating any variation from or correction to information previously furnished.

## **2.10 ELECTRONIC DATA INTERCHANGE (EDI)**

### 2.10.1 EDI and Automated Carrier Interface (ACI) System.

(a) Electronic exchange of booking and intransit status data is required by this contract. EDI is the preferred method for exchange of this data.

(b) Carriers electing to participate in the MTMC EDI are required to execute a Trading Partner Agreement (TPA) with MTMC. This is an umbrella document that describes the use of electronic media and electronic signatures; and establishes EDI transactions as legally enforceable in lieu of signed paper documents. Carriers who have not executed TPAs with MTMC for ocean cargo booking and Intransit Visibility (ITV) transactions will initiate a TPA with MTMC no later than 14 calendar days after contract award. The TPA will be approved upon successful completion of transmission tests for each transaction set.

2.10.2 Cargo Receipt and Lift Data for CONUS. The Carrier shall develop EDI capability to pass cargo receipt and lift data to the MTMC documentation activity and cognizant MTMC Command.

2.10.3 Establishment of EDI Capability. ACI/EDI capability for cargo offering/booking and receipt/lift data on a fully integrated level must be available on the effective date of this Contract. All questions regarding ACI/EDI implementation under Section 5 should be directed to JTMO (Mr. Joe Crandall) 703-428-2488.

## 3.0 REGULATORY COMPLIANCE

The Carrier shall file all rates and terms of this Contract with the Federal Maritime Commission (FMC), the Surface Transportation Board (STB), and/or with other governmental agencies as may have jurisdiction over the services provided by the Contractor as set forth in this Contract. The Carrier agrees to comply with such regulations of the FMC, STB, and/or other governmental agencies as may be applicable for service to the Government in the carriage of military cargo as set forth in this Contract.

### 3.1 BUNKER ADJUSTMENT FACTOR (BAF)

a. An allowance for fluctuations in marine fuel prices shall be paid to the carrier in accordance with the following:

(1) Offerors shall provide a fuel consumption standard for the vessel(s) offered in service. Per barrel consumption at steaming by bunker type (e.g., HFO, MDO) and barrels consumed per hour at berth shall be provided. At the conclusion of the first annual period of the contract, a base price will be computed for Melbourne, Fla. The source of price information is the Platts Oilgram Bunkerwire based on the bunker type used by vessel as provided. These prices are quoted in dollars per metric ton. They will be converted to barrels by dividing by 6.55. An average price per barrel will be computed over the corresponding first annual contract period. The base price is the average of the weekly price for the corresponding annual contract period. The prices will be computed by the ACO.

(2) No later than thirty (30) calendar days after the conclusion of the second annual contract period, and for any subsequent annual option period exercised by the Government, the Carrier shall submit to the ACO a certified statement by voyage of total fuel consumption for the voyages accomplished during the annual contract period. For each voyage, the certification shall contain the following information: Ship name, sailing dates, POD and POE, carrier voyage number and route index, DTS voyage number.

(a) Average round trip steaming mileage will be divided by nautical miles per barrel fuel consumption factor provided in the carriers offer to yield barrels consumed per voyage. The COR shall determine a factor for an average number of hours at berth. This factor shall be divided by hours per barrel at berth provided in the carrier's offer to yield barrels consumed at berth. Barrels consumed (steaming and at berth) for all voyages will be totaled for the annual period.

(b) A new average annual fuel price, a dollar differential, and a percent differential will be computed by the COR for the second annual period of the contract in the same manner as the base period

per paragraph (1), above. The dollar differential is the new average fuel price minus the base price. The percentage differential is derived by dividing dollar differential by base price. If the percent differential is greater than 20%, a payment or deduction will be made. If cost increase results in payment to the carrier, such payment will be a lump sum. If a cost decrease results in benefit to the Government, the Government shall set off sums against monies owed the carrier. The dollar payment/set off shall be determined by application of the annual computed dollar differential, less 20%, times the total annual fuel consumption (in barrels) for the relevant contract period.

b. The fuel allowance applies to carrier purchases of fuel from normal commercial suppliers and does not apply when fuel has been provided or subsidized by the U. S. Government or foreign Governments.

### **3.2 APPLICATION OF COGSA**

3.2.1 Incorporation. The United States Carriage of Goods by Sea Act (COGSA) 46 U.S.C. 1300-1315 is incorporated into this Contract and shall apply to the ocean transportation of all goods (including goods in containers stowed on deck, which shall be considered as goods stowed under deck) under any Shipping Order with the same force and effect as if the Act applied to such carriage by express provision therein; provided, however, in case of loss, damage or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to the period within which notice thereof shall be given the Carrier or as to the period within which claim therefor shall be made or suit instituted.

3.2.2 Liability. For the purpose of interpreting paragraph 4 of COGSA "Limitation of Liability," for all cargo, the limitation of liability set out in paragraph 4 of COGSA shall apply to each package, and for cargo not in packages to each measurement ton of cargo within the container. The carriage of cargo under any Shipping Order issued pursuant to this Contract shall not be deemed or construed to be the carriage of cargo pursuant to special terms and conditions as provided for in paragraph 6 of COGSA; and nothing in this Contract is intended to relieve the Carrier or the vessel from liability for loss or damage to or in connection with the goods arising from negligence, fault, or failure in the duties and obligations provided by COGSA or to lessen such liability otherwise than as provided therein. The Carrier shall be liable as a common Carrier by land for any loss between any inland origin and the vessel's side and between the vessel's side and any inland destination.

### **3.3 SCOPE OF VOYAGE (LIBERTIES)**

3.3.1 Determination of the Master. In any situation, which in the judgment of the Master of the vessel is likely to give rise to capture, seizure, detention, damage, delay, or disadvantage to or loss of the vessel or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to begin or continue the voyage or to enter or discharge goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging, or leaving the port of discharge or the usual place of discharge in such port, the Master, whether or not proceeding toward or entering or attempting to enter the port of discharge, or reaching or attempting to reach the usual place of discharge therein, or attempting to discharge the Government's goods may, upon prior notification to and with the consent of the Contracting Officer, discharge the goods into another port, depot, lazarette, craft, or other place, or the Master may proceed or return, directly or indirectly, to or stop at any place whatsoever as the Master or the Carrier may consider safe and advisable under the circumstances. Notification to the Contracting Officer shall include, but not limited to the planned port of discharge of the cargo and any measures planned to protect the cargo. If the Contracting Officer determines that the planned disposition of the cargo is not in the Government's best interest, the Carrier shall comply with the Contracting Officer's direction to the Carrier to divert the cargo to a port of the Government's choice and to make any other arrangements necessary to protect the Government's interest. In any event, the Carrier shall at all times be responsible to assure the security and protection of the cargo until relieved of such responsibility by the Government or its designated agent. The vessel may carry munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

3.3.2 Compensation. For any service rendered herein upon prior notice to and with the approval of the Government, the Carrier may be entitled to an equitable adjustment to be agreed upon by the Carrier and the Contracting Officer. In no case shall the Carrier be entitled to any extra compensation for any services rendered



without prior notice to and with the approval of the Government, and in no such case shall freights be payable until the goods are delivered to the named destination on the Shipping Order.

**3.3.3 Compliance with Governmental Direction.** The Carrier, the Master, and the vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise, howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the vessel, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the Contract voyage.

### **3.4 FORCE MAJEURE**

Acts of God, enemies, fire, restraint of princes, rulers of people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Contract are mutually excepted. The vessel shall have the liberty to deviate for the purpose of saving life and property, to tow or to be towed, to sail with or without pilots, to adjust compasses and/or radio equipment, to call at any port for repairs, or to go into dry dock or into ways with or without cargo on board.

### **3.5 STRIKES**

**3.5.1 General.** Except as provided below, neither the Government nor the Carrier shall be responsible for the consequences of a strike or lockout preventing or delaying the fulfillment of any obligation under this Contract.

**3.5.2 Loading Port.** In the event the vessel or loading of the vessel is delayed by reason of strike or stoppage of work, the Carrier reserves the right to delay or cancel the voyage, or to dispatch the vessel with such cargo as may then be on board. If part of the Government's cargo has already been loaded and the Carrier is not prevented from the dispatch of its vessel by reason of the strike or stoppage, then the Carrier must carry it to the port of discharge and the freight payable shall be on the loaded quantity of cargo only, unless contrary instructions are given by the Government.

**3.5.3 Discharge Port.** In the event the vessel or discharge of the vessel is delayed by reason of strikes, lockouts, or stoppage of work, the Carrier reserves the right to keep the vessel waiting until such strike or lockout is at an end and discharge the cargo still on board or with the approval of the Government to proceed to an alternate safe port of discharge where the vessel can safely discharge. All conditions of this Contract and the shipping order issued hereunder shall apply to delivery of the cargo at such alternate port, and the Carrier shall receive the same freight as if the cargo had been discharged at the original port of destination. If the Carrier shall deliver the cargo to an alternate port of destination without the approval of the Government, the Carrier shall only earn freight upon delivery at the named port of destination, and shall not be entitled to any compensation or reimbursement for additional costs incurred by reason of that deviation to an alternate port.

### **3.6 AMENDED JASON CLAUSE**

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, Contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

### **3.7 GENERAL AVERAGE**

General Average shall be adjusted, stated and settled, according to York-Antwerp Rules 1974 as amended to the date of this Contract, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by those Rules, according to the laws and usage's at the Port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship.

### 3.8 LIENS

3.8.1 Seizure of Cargo. The Carrier agrees that it will not assert any type of lien, including a maritime lien, on any cargo shipped by the Government under this Contract. The Carrier further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S. or any foreign country. The Carrier agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

3.8.2 Freight. There shall be no liens, asserted or permitted on any freights payable by the Government under this Contract. The Carrier agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

### 3.9 WAR RISK

#### 3.9.1 Reimbursement.

3.9.1.1 Normal Port Calls. In the event it is necessary for the vessel's owners to pay premium to extend the coverage of crew, hull and machinery, and protection and indemnity insurance and insurance covering the loss and damage of containers while aboard the vessel to include war risks in excess of premium on such war risk coverage on the date the Carrier's rates were submitted under this Contract, or to pay crew war risk bonuses as a result of the vessel entering a war risk area, the Government shall reimburse the Carrier for a percentage of such extra premium and bonus payments based on the ratio existing between the cargo carried for the account of the Government which is loaded or discharged at ports within the war risk area and the total cargo aboard the vessel which is loaded or discharged at ports within the war risk area.

3.9.1.2 Government Requested Port Calls. If Carrier is ordered to any port, place, zone, or route involved in a state of war, warlike operations or hostilities, civil strife, or piracy (whether there be a declaration of war or not) where she might reasonable be expected to be subject to capture, seizure, arrest, or hostile act by a belligerent power (whether de factor or de jure), it shall be unreasonable for the Carrier not to prosecute said instructions if insurance against said risks is then available commercially or under a Government program. In the event of the existence of said risks, the Government shall reimburse the Carrier for all such excess premium and bonus payments and for the extra cost of cargo war risk insurance premium on commercial cargo aboard the vessel at the time of entry into the war risk area.

3.9.1.3 Government Provided Insurance. If commercial marine, war risk, and liability is not available or if marine, war risk, and liability insurance through the Secretary of Transportation under Sections 1202-1205 of the Merchant Marine Act of 1936, 46 App. U.S.C. 1282 - 1285, is available at a lesser rate, the Contracting Officer reserves the right to require Carriers to obtain the necessary marine, war risk, and liability insurance from the Secretary of Transportation. Further, in the event that the Secretary of Defense, or his authorized designee, is authorized to provide and does provide indemnification to the Secretary of Transportation under Section 1205 of the Merchant Marine Act, 1936, 46 APP. U.S.C 1285, for marine, war risk, and liability coverage without premium, the Contracting Officer reserves the right to require the Carrier to obtain such insurance from the Department of Transportation and no premium as set forth in paragraphs a.(1) and (2) above will be paid to the Carrier.

### 3.10 CONTAINER LOSS OR DAMAGE

The Government shall reimburse the Carrier against loss of or damage to a container in accordance with Section 4.8 and as set forth below.

3.10.1 Causes. The Government shall reimburse the Carrier for loss or damage that is caused by capture, seizure, arrest, restraint or detainment, hostilities or warlike operations whether there be a declaration of war or not, civil war, revolution, rebellion, insurrection, civil strife, or civil commotion.

3.10.2 Location When Damaged. The Government shall reimburse the Carrier for loss or damage that occurs when the container is not aboard the vessel, but is located within the war risk area and is (a) in the Government's custody or (b) not in the Government's custody but either stuffed with cargo shipped under this Contract or emptied of such cargo and being transported between a place of initial stuffing or final unstuffing and the Carrier's nearest terminal, or other places not further distant than such terminal, and waiting at such terminal to be loaded in the first of the Carrier's vessels to call.

3.10.3 Not Otherwise Covered. The Government shall reimburse the Carrier for loss or damage to the extent that it is not covered by insurance as set forth in Section 4.8 of the contract.

### **3.11 LIMITATION OF GOVERNMENT LIABILITY**

No payments shall be due from the Government under this clause unless and until the Carrier shall also assess such costs against commercial cargo loaded or discharged in the war risk areas.

### **3.12 GOVERNMENT AS ADDITIONAL ASSURED**

The Carrier agrees to add the United States Government as an additional assured with waiver of subrogation on its war risk policy obtained by the Carrier and for which the Government has agreed to reimburse the extra premium under this section.

### **3.13 SHIPMENTS BY AUTHORIZED AGENTS OF THE GOVERNMENT**

The following provisions apply to shipments by recognized ordering authorities that are agents of the Government and authorized to use contractual rates resulting from this solicitation.

a. Parties to the contract. Parties, on the first part, include the U.S. government and its agents and authorized contractors other than the carrier(s) under this contract, including but not limited to, Code 3 Military Household Goods (MHHG) ITGBL carriers and Point to Point POV Pilot Program (PPPPP) carrier(s) (hereinafter called "the Shipper"), and, on the second part, (the ocean carrier). The Government shall be responsible for designated ordering activities as provided at FAR 52.216.19

b. Carrier(s) party to contracts awarded pursuant to DAMT01-01-R-0188 will receive written advice from the PCO of those contractors authorized to ship pursuant to rates established under resulting contract award(s).

c. Booking of cargo. The Shipper agrees to offer cargo for booking upon no less than 7 working days notice prior to a scheduled intermodal point or base port departure date unless a later time is agreed upon by the parties for a particular shipment or group of shipments. For such shipments offered on a port to port basis (e.g., specific port zones) by the authorized agent, the Shipper agrees to offer cargo for booking upon no less than 3 working days notice prior to a base port departure date unless a later time is agreed upon by the parties for a particular shipment or group of shipments. Carriers shall have a maximum of 24 hours to accept an offering of cargo and notify the Shipper of such acceptance.

d. Shipping order. For Code 3 MHHG, the ITGBL carrier will prepare a shipping order substantially in the form of the clearance order/shipping order (JTMO Form 4612/1/). For PPPPP shipments, the authorized agent will prepare a shipping order substantially in the form of the shipping order/clearance order (SOCO) (JTMO Form

4612/1). The shipping order shall be evidence of ownership and will constitute the contract of carriage issued to the ocean carrier.

e. Carrier load port. The ocean carrier shall provide the cognizant MTMC activity and the military activity responsible for cargo documentation at each port where containers with Government cargo are loaded with certain information in connection with containers loaded at that port. Container receipt information required at CONUS and designated overseas ports of loading, shall be provided within four hours after a container is received. For ordering activity shipments, container receipt and lift information shall be furnished to the party who ordered the container services stating the Shipping Order number rather than the TCN as used with other DTS shipments (on board ocean bill of lading acceptable.) Container lift information shall be provided within eight (8) hours after vessel departure for CONUS/overseas port. This information shall be provided by a mutually agreeable means and shall indicate as much of the following data for each container received/loaded as is available within that time:

1. Container Receipt Information (CONUS and Designated Overseas Ports of Loading)
  - (a) Name of ocean carrier
  - (b) Port of loading
  - (c) Date container received at port
  - (d) Carrier's container number with ALFA prefix
  - (e) Transportation Control Number (TCN)
  - (f) Seal and/or keyless lock number
2. Container Lift Information (CONUS/Overseas Ports of Loading)
  - (a) Name of vessel and voyage document number
  - (b) Carrier's container number with ALFA prefix
  - (c) Transportation Control Number (TCN)
  - (d) Port of discharge
  - (e) Final destination
  - (f) General description of container contents, i.e., General Cargo - Mail/Mail Equipment - Privately Owned Vehicles (POV'S) - other Unboxed Wheeled or Tracked Vehicles - Refrigerated Cargo
  - (g) Seal and/or keyless lock number -

Note: The carrier is to notify the COR if a seal on any container has been broken and/or replaced between the time the carrier accepted the loaded container from the Government and the time of arrival at inland destination or point of Government acceptance from the carrier with a complete report as to the circumstances and the reasons therefore.

f. Carrier discharge port. The ocean carrier shall provide the cognizant MTMC port activity with certain information in connection with containers discharged at that port. For authorized agent shipments, container discharge information shall be furnished to the authorized agent's consignee listed on the Shipping Order stating the Shipping Order number (arrival notice or similarly acceptable notice with discharge noted.) This information, which

shall be provided for each container discharged as soon as practicable after discharge, but not later than one day following the commencement of drayage or line-haul, shall include the following:

Name and voyage number of vessel making delivery

Name and voyage number of original carrying vessel if transshipped

Date and time the container was discharged from the vessel

Date, time, and mode of commencement of drayage or line-haul from discharge port to inland destination, container number, and consignee.

g. Weekly lift and authorized agent shipment statistics. The Carrier agrees to provide weekly volume information to the COR for all shipments under this contract with statistics specifically segregated from overall lift. Information shall include, but is not limited to, the number of containers by origin or destination, direction and size of equipment.

h. Payment. The authorized agent shall make payment directly to the ocean carrier for services ordered under this agreement. The carrier will provide written verification of delivery to the ordering activity.

i. Detention invoices. The authorized agent ordering services from the ocean carrier is responsible for certification and payment of all container detention charges applicable in accordance with the contract.

#### **4.0 BOOKING POLICY**

Cargo designated for shipment will be booked by individual rate category to the U.S. Flag carrier awarded under this contract to the Ascension Island

#### **4.1 CENTRAL CONTRACTOR REGISTRATION (CCR)**

Department of Defense (DoD) policy will require all offerors who do business with federal agencies to be registered in the CCR to receive solicitations, awards and payments. The CCR allows Federal Government contractors to provide basic business information, capabilities and financial information one time with changes updated annually. As the single repository for contractor data, the CCR will provide worldwide visibility of sources to Government acquisition personnel and finance officers.

To register, you must input your application directly to the CCR through the interactive World Wide Web application at <http://www.ccr2000.com> or you may mail or fax the application to:

CCR Assistance Center  
74 Washington Street North  
Suite 7  
Battle Creek, MI 49017-3084  
Tel: 1-888-CCR-2423 or FAX: 1-616-961-7243

All contractors conducting or planning to conduct business with the Military Traffic Management Command are required to register in the CCR as soon as possible to ensure future consideration for receipt of solicitations, awards and payments. Please note that the registration process may take approximately 30 days due to the volume of contractors registering.

#### **4.2 LIMITATION OF GOVERNMENT LIABILITY**

4.2.1 Dead Freight. The Government shall not be liable for payment of dead freight.

4.2.2 Required Delivery Dates. Notwithstanding any other provisions of this Contract, the Government may make alternative transportation arrangements, without notice to the Carrier, for any cargo that the Carrier cannot deliver by the Required Delivery Date (RDD) provided by the OO for that cargo. The determination to make alternative transportation arrangements on the basis of RDD shall be made by the OO after submission of a request in writing from the OO for such arrangements.

### 4.3 EXCEPTED CATEGORY CARGO

Excepted category cargoes are listed below. Pursuant to FAR 52.212.4 , Contract Terms and Conditions -- Commercial Items (May 1999) , rates for their carriage may be negotiated by the Contracting Officer prior to booking. (The Contracting Officer is not required to ship excepted category cargo with the Carrier). The Carrier shall not accept excepted category cargo for shipment unless a rate for its carriage has been negotiated with the Contracting Officer or the Contracting Officer has issued an unpriced change order pursuant FAR 52.212.4 , Contract Terms and Conditions -- Commercial Items (May 1999). Cargo categories not excepted below and for which specific rates do not appear herein, shall be carried at the applicable General Cargo rate.

- Aircraft (unboxed)
- Bulk Cargo (not containerized in tank cars, vehicles, or containers)
- Boats over 40 feet in length
- Oversize Cargo (single shipment quantity in excess of 50,000 pounds or 30 measurement tons)
- Refrigerated Cargo (CONUS BOUND)

### 4.4 GOVERNMENT OBLIGATION

4.4.1 Volume of Cargo. A projection of cargo to move under contracts awarded pursuant to this solicitation is provided in Attachment 1. JTMO does not guarantee the completeness or accuracy of the projection, which is provided for informational purposes only.

4.4.2 Average Minimum Guarantee. The Government shall guarantee a payment of 85 twenty foot equivalent units (TEUs) per round trip voyage based on an aggregate sequential voyage average (ASVA) for the minimum service to Ascension Island every 60 days. In the event a more frequent service is accepted by the Government, such guarantee shall be adjusted proportionally. Additional sailings will not be included for the purpose of averaging the ASVA. The calculation of the ASVA in accordance with paragraph 4.4.3, below, shall determine the entitlement, if any, to such minimum payments. Such minimum payments, if any, shall be rendered to the Contractor at the end of each six month period of the Contract based on an ACO certification to the PCO that the ASVA for the minimum number of voyages falls below the minimum 85 TEUs per round trip voyage. The Government shall compensate the Contractor for each whole TEU that the ASVA falls below the 85 TEU minimum.

4.4.3 Application of ASVA. For purposes of calculating the rate for minimum ASVA payments, the per TEU compensation for any ASVA for a specific voyage that falls below the minimum of 85 TEUs shall be the average of the Outbound and Inbound 20 Foot Container Rate.

4.4.4 Cargo Lift Certification Procedures for Payment of ASVA Minimums. The Contractor, within ten (10) working days of the end of each six-month period of the Contract (semi-annually), shall submit to the ACO a worksheet detailing the total cargo lifted on each voyage of the respective semi-annual period. The Contractor shall add any cargo carried on additional sailings above the minimum required in paragraph 4.4.2 of the Contract to the nearest minimum sailing's arrival at Ascension Island in the semi-annual period. Upon certification of the ASVA worksheet by the COR (for that semi-annual period), the Contractor shall submit an invoice, if entitled, to the designated paying activity (or any subsequently identified paying office) under this Contract for any certified minimum payments. Such invoice, if any, shall be accompanied by the ACO certified worksheet.

**4.4.5 Volume of Cargo.** A minimum volume of cargo per round trip voyage is guaranteed under this Contract. The Government shall guarantee 85 TEUs (or adjusted amount as indicate in 4.4.2, above) per round trip voyage based on a semi-annual aggregate sequential voyage average (ASVA). For calculation purposes, a round trip voyage shall include all of the cargo tendered by the Government for an outbound sailing from CONUS to Ascension Island and the following inbound sailing from Ascension island to CONUS. The Government shall sum the total number of all containers tendered by the Government for each round trip voyage. Breakbulk cargo shall be added to that total by converting the manifest measure of all such cargo using a conversion of one TEU per 21 measurement tons of cargo tendered. Vehicles shall be added to that total by converting the manifest measure of all such cargo using a conversion of one TEU per 10.5 measurement tons of cargo. The ASVA shall then be determined for every six months of the Contract by dividing the total cargo tendered by the Government for all of the round trip voyages completed during the respective 6 month period of the Contract by the number of the voyages. That ASVA of TEUs shall determine payments, if any, that are payable as minimums. The ASVA shall be based solely on the minimum sailings in accordance with paragraph 4.4.2. Any cargo carried on additional sailings during the semi-annual period shall be added to the aggregate cargo of the nearest required minimum sailing completed during the quarter. Additional sailings will not be included for the purpose of averaging the ASVA. Such payments shall be made in accordance with the Rate Rules Section of the contract.


#### 4.5 OVER DIMENSIONAL AND UNUSUAL SIZE CARGO SERVICE


- (1) Over dimensional cargo is defined as cargo that when booked to be shipped as a unit of cargo in/on single container does not exceed the following maximum weight and dimensions:


Weight: 16,000 lbs.  
 Length: 20'0" (240")  
 Width: 11'0" (132")  
 Height: 11'6" (138")

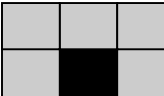
(a) Surcharges for under 40 ft flatracks appear at CARE-SM II System. Such surcharges shall not, however, apply to Government owned flatracks. Charges for over dimensional cargo and out of gauge flat racks shall equal the additional slot charge for displaced dry container(s) by size, less a 40% discount (see below). No payment shall be made for side or top stow where no additional slot is used by size of flat.

The following formulae for computation of out of gauge flat racks shall used:

In gauge:	BOF (Basic ocean freight)	
	<u>+FRS</u> (Flat rack surcharge)	
	TC (Total charge)	

Over height:	BOF+(BOF x 60%)	
(max: 13' 2" from base	<u>+FRS</u>	
of platform)	TC	

Over width:	BOF+((BOFx2) x 60%)	
	<u>+FRS</u>	
	TC	

Over height and	BOF+((BOFx5) x 60%)	
and over width:	<u>+FRS</u>	
	TC	

The above calculations will be modified based on operational dimensions and eventuality of side/top stowage:

Over dimensional cargo is any cargo which has a dimension (length/width/height) of 474" x 98" x 102"

For side stow of over width:  $\text{BOF} + (\text{BOF} \times 60\%)$  vice  $\text{BOF} + ((\text{BOF} \times 2) \times 60\%)$

For side stow of over height/over width:  $\text{BOF} + ((\text{BOF} \times 2) \times 60\%)$  vice  $\text{BOF} + ((\text{BOF} \times 4) \times 60\%)$

For top stow of over height - BOF - no additional slot

A 40% discount shall be applied for vacant slots in any configuration.

- (b) Vacant slots for which charges are assessed will be counted toward the average minimum cargo guarantee stated at paragraph 4.4.2 .
- (c) The Government reserves the right to ship oversized/over dimensional cargo on breakbulk terms. The Carrier, at its discretion, may elect to containerize the cargo, but at no additional cost to the Government above those breakbulk rates specified in CARE-SM II System.

#### 4.5.1 Service Commitment.

- a. Space Commitments: Carrier's space commitment shall be as stated at paragraph 2.1.

4.5.2 Service Changes. The Carrier may modify its schedule to reflect permanent changes in its regularly scheduled service as offered pursuant to the solicitation to the extent that the Carrier remains in compliance with provisions at paragraph 2.1.

4.5.3 The Government will consider exemption from the provisions of paragraph 2.1 for carriers that anticipate scheduled drydocking of vessels that call the direct ports listed on the carrier's description of service. Each exception will be reviewed and determined by the PCO based on the extent to which drydocking directly affects the carrier's ability to deliver cargo and provide service on the affected route(s). Each review will be conducted independently of any other, and each determination will stand on its own without regard to establishing precedent. Carriers will provide the COR/PCO a minimum of 120 days notice of an impending drydock. The Drydock Notice will include the vessels, the routes and port calls involved, the dates of the drydocking, the dates of the change in service, and a description of the carrier's best effort to provide the same level of service, including substitution of vessels and other affected assets. Notices submitted less than 120 days before the dry docking will not be considered. Exemptions will not alter established prices and other terms and conditions contained herein, applicable law and regulation will not be exempted, nor will provision be made for the carrier granted such exemption to recoup any cargo volume foregone over the exemption period during subsequent contract periods.

## 4.6 LIMITATIONS OF CARRIER'S OBLIGATION

4.6.1 Cargo Rejection. Notwithstanding any other provisions of this Contract, the Carrier shall have the right to reject explosives (other than Class 1); dry or liquid bulk cargo (i.e., not packaged, containerized or in vehicles); any species of live animals and other cargo deemed by the Carrier to be dangerous or obnoxious in character. Any such cargo accepted for carriage shall be freighted at the General Cargo rate.

4.6.2 Unsafe Operation. The Carrier shall not be required to receive or deliver containers at points or places where it is impracticable or unsafe to operate tractors and chassis due to conditions of roads, streets, or alleys or



when prevented from doing so because of fire, acts of God, acts of war, riots, civil commotion, strikes, lockouts, stoppages or restraints of labor or other labor disturbances.

4.6.3 Hazardous Cargo. The transportation and handling of hazardous cargo for shipment shall be subject to Title 49 of the Code of Federal Regulations, Part 171, et seq. (49 CFR) in force at the time of shipment. The Carrier shall refuse to transport hazardous cargo, either by land or by ocean, which does not conform in all aspects to these regulations and any other applicable U.S. governmental regulations.

a. When the Carrier refuses to pick up a container based on non-compliance with appropriate regulations as stated herein, the Government shall reimburse the Carrier the actual linehaul/drayage charge for such container if the Carrier has made a futile trip in connection with such circumstances as a result of Government failure to comply with applicable hazardous cargo regulations.

b. Also known as Dangerous Goods in Limited Quantities. Merchandise classified as such, as defined in Volume I, The International Maritime Dangerous Goods Code (IMDG) w/amendments 25-89) as specified in par. 18.6-18.9, p. 0135 and containerized for shipment under this contract will not require additional special labeling, documentation or other restrictions unless specified in future amendments to the IMDG. Cargo moving under this commodity category shall not be entitled to a hazardous cargo surcharge. This cargo may include, but is not limited to items in (Dangerous Goods in Limited Quantities as specified: form-d cargo (70dz9), charcoals, cigarette lighters, cleaning compounds, cosmetics, disinfectants, hypochlorite solution (bleach), insecticides, and polishing compounds.

4-6.3.1 Hazardous Waste Material. When transporting hazardous waste material, the carrier must obtain an Environmental Protection Agency identification number (40 C.F.R.263.11). Carrier should accept only those hazardous wastes that have been manifested in accordance with 40 C.F.R. 262.20 and 262.20(b). The manifest shall stay with the shipment to its destination. 40 C.F.R 263.20 (c). Carrier must deliver the waste to the designated TSD facility on the manifest or to its designated alternate facility in case of an emergency. 40 C.F.R. 263.21(a) and (b).

(a) Spill Reporting - In the event of an accidental discharge of the hazardous material during transporting the carrier is required to take immediate action to protect human health and the environment as defined in 49 C.F.R. 171.15 and must be reported verbally and in writing to the National Response Center, Office of Hazardous Material Regulations Department of Transportation, Washington, DC 20590. See 33 CFR 153.203, 40 C.F.R. 263.31, State and local laws may require additional notifications. Carrier is liable for spills and discharges of cargo while being transported and is responsible for the cleanup. 40 C.F.R. 263.30 and 31.

(b) Storage - Carrier may store material enroute up to ten (10) days at each transfer facility as defined by 40 C.F.R. 260.10, 263.12 and 268.50 (a) (3) without becoming a TSD facility. If storage exceeds the ten days at any transfer facility, then the carrier must issue a new manifest and sign and return to the initial shipper its original manifest. Carriers transporting hazardous waste material into the United States from abroad or who mix hazardous wastes of different DOT shipping descriptions into the same container must also meet the standards applicable to hazardous wastes shippers.

(c) Upon an order for services to transport HAZMAT (not Hazardous Cargo Dangerous Goods in Limited Quantities) under this contract, the OO shall provide to the Carrier, the class, flash point and UN number of the cargo, including any placards/labeling and special handling instructions of such cargo. Cargo moving under this category shall be entitled to the applicable lumpsum hazardous cargo surcharge as set forth in CARE-SM II System. The cargo may include, but not is limited to the following items listed: batteries (wet filled with acid), engine starting fluid, flammable liquid (toxic, n.o.s.), gases (liquefied), hypochlorite solution (bleach), lighters, oxygen (compressed), petroleum distillates n.o.s., petroleum, and windshield washer solvent.

4.6.3.2 Explosives. Explosives, other than small arms ammunition, are excluded from the scope of this Contract and shall not be carried hereunder.

## 4.7 MAXIMUM VOLUME OF CARGO

The Contractor's maximum cargo volume service obligation to the Government under the Contract schedule is the full cargo capacity of the vessel(s) offered for service which shall be not less than 100-20' containers and 2000 square feet of protected breakbulk/vehicle space per minimum sailing outbound. Inbound CONUS will consist primarily of empty containers being returned to Contractor. Return container and breakbulk shipments will be booked on an as required basis with the contractor.

#### **4.8 DAMAGE TO EQUIPMENT**

4.8.1 Damage to Carrier Equipment. Should a container, chassis, or any other piece of Carrier equipment be damaged by act of the Government, its agents, employees, or Contractors while such Carrier equipment is in the custody of the Government, its agents, employees or Contractors, the Government shall repair or reimburse the Carrier the least of the following: the reasonable costs of repairs; the fair market value immediately prior to the damage; or the depreciated value on the Carrier's books. The Carrier will assign to the Government any rights, causes of action, or other claims, which the Carrier may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this Section unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned to the Carrier. Claims submitted under this Section 4.8 below shall be filed to the Military Traffic Management Command, Staff Judge Advocate, Room 12N67, Alexandria, VA 22332-5000.

4.8.2 Damage to Carrier Vessel or Vessel Equipment. Should the vessel or its equipment be damaged by act, neglect or failure of equipment of the Government, its agents, employees, or Contractors in loading or discharging the vessel, the Government shall reimburse the Carrier the reasonable costs of repairs and the Carrier will assign to the Government any rights, causes of action, or other claims which the Carrier may have against third parties with respect to such repairs. In the event that any damage should occur to the vessel or its equipment as a result of the joint fault of the Carrier and the Government, payment for such damage shall be apportioned pro rata in accordance with the respective degrees of fault. The Government shall not be liable for the repair of any damage under this Section unless notice specifying such damage and the name(s) of the party or parties causing such damage shall have been given to and acknowledged by the Government or its authorized representative as soon as possible after the occurrence of such damage, or in any event before the vessel leaves the berth or anchorage where the damage occurred, and provided, further, that the Government shall not be liable for the repair of any damage under this Section if such damage is caused by a Contractor of the Government unless demand first is made upon such Contractor by the Carrier and payment therefor has been refused.

4.8.3 Damage to Government Equipment. The Carrier shall be liable for loss of or damage to Government containers and chassis while in the Carrier's custody to the same extent that the Government is liable for loss of or damage to the Carrier equipment while in the Government's custody. The Carrier will not procure insurance coverage on Government containers and will not be liable for any loss thereof under circumstances covered by the Carrier's war risk insurance on its own containers.

#### **4.9 GOVERNMENT FURNISHED CONTAINERS**

From time to time the Government may book cargo for carriage in Government-owned or leased containers or may book carriage of empty Government owned or leased containers. It is contemplated that such containers will usually be 20 foot closed top, dry ISO cargo containers, although other types and sizes of containers may be used. The Carrier will furnish any additional equipment, including chassis, necessary for the carriage of cargo in Government containers in accordance with the provisions of this Contract and the requirements of particular Shipping Orders. All provisions of this Contract shall apply to the carriage of cargo in Government containers in the same manner that they apply to the carriage of cargo in the Carrier's container.

#### **4.10 CARGO RECEIPT**

Any receipt signed by or on behalf of the Master shall be without prejudice to the terms, conditions, and exceptions of this Contract, and subject to all of them. The Government fully warrants the accuracy and completeness of all papers and documents relevant to the shipment of all cargo tendered under this contract.

4.10.1 Improper Documentation If the Government does not provide the Carrier with the correct container documentation at the time and location of Carrier acceptance, the Carrier may refuse to accept the container. If the Carrier chooses to pick-up or accept the container, the Carrier shall provide the cognizant MTMC manifesting activity with all the missing receipt or lift data in order that the container can be completely identified for onward movement. This information must be provided within one (1) working day of receipt or lift, or earlier if necessary to meet the scheduled vessel sailing. The Government shall hold harmless the Carrier, the Master, and the vessel of and from all consequences or liabilities that may arise from any irregularity in the papers supplied by the Government, and shall reimburse the carrier the direct cost of any fines or charges incurred as a result thereof in accordance with Rate Rules Section of the Contract.

#### **4.11 FAILURE TO SPOT**

4.11.1 Remedies. When the Carrier fails to spot an empty container by the designated date and time, and as a result there is not reasonable time to allow stuffing and release of the container in sufficient and reasonable time to meet the scheduled sailing date of the vessel to which the container is booked, the Carrier shall be liable either for the payment of liquidated damages or for the reimbursement of expenses incurred by the Government to obtain alternate transportation of the container. The Government shall also be entitled to cancel the booking of such cargo.

4.11.2 Liquidated Damages. Liquidated damages for failure to spot shall be equal to the detention charges as stated at paragraph 1.9, Container Detention Charges, until the container is spotted or a new spotting date and time are agreed upon by the OO. Further, if the failure to spot does not allow for Government stuffing and release of the container in sufficient reasonable time to meet the scheduled sailing date of the vessel to which the container is booked, liquidated damages equal to detention charges for each 24-hour period, or part thereof, will apply from the completion of loading of the vessel to which the container was originally booked to the time of commencement of loading of the Carrier's next scheduled vessel to the port of destination to which the container was booked. If the Government cancels the booking, the Carrier's liability for liquidated damages shall be limited to the period ending with cancellation.

4.11.3 Alternate Transportation. If the Government elects to employ alternate intermodal transportation to move the container to another port, the Carrier shall be liable for any expenses or costs incurred by the Government above the expenses that normally would have been incurred had the container been furnished by the designated time and date.

4.11.4 Government Responsibility for Failure. Neither liquidated damages nor charges for Government expenses will be assessed if the Carrier can establish: 1) that the inability to spot the container as agreed is the result of the Government's failure to unstuff and release an empty container to the Carrier within a reasonable time to meet the required spotting date; 2) that it advised the OO of such inability at least seven days prior to the required spotting date; and 3) that the Carrier only accepted bookings which could reasonably be expected to be fulfilled.

#### **4.12 DELAY IN SPOTTING**

When the Carrier fails to spot an empty container by the designated date and time, and as a result the Government must incur overtime expenses to enable stuffing and release of the container by the Government prior to the scheduled sailing date of the vessel, the Carrier shall be liable for payment of liquidated damages equal to the total overtime expense incurred by the Government.

#### **4.13 OVERWEIGHT CONTAINERS**

4.13.1 Notification. At the time of booking, the Carrier shall notify the OO if the maximum cargo weight which can be loaded into a container which is to be stuffed by the Government is less than the standard maximum

cargo weight capacity for the container, and the reason therefor. Containers on which such restrictions are imposed shall not be utilized under this Contract if acceptable containers are available for the required service from any other Carrier, which does not impose a restriction. For the purpose of this contract, any container weighing over 30,000 pounds is considered overweight due to lift limitations at Ascension Island and will not be accepted without written approval of the OO.

4.13.2 Cost Liabilities. If the Government stuffs a container with cargo weighing in excess of the container's standard maximum weight carrying capacity or in excess of any lesser weight of which it has been given notice under paragraph 4.13.1, it shall remove, or pay the expense of removing the excess of cargo, reimburse any fines or penalties exacted of the Carrier in moving or handling the excess weight of cargo. All fees or other costs incident to weighing containers shall be the responsibility of the Carrier.

4.13.3 Carriage of Overweight Containers. The Carrier shall not refuse to carry a container between a CONUS port and Ascension Island that weighs in excess of the local maximum weight allowed by U.S. Federal, state, or local governments if the container can be discharged from the vessel and the excess weight of cargo can be removed without violation of the applicable law, regulation, or ruling that established the maximum weight.

#### **4.14 GOVERNMENT FAILURE TO TIMELY RELEASE CONTAINERS**

4.14.1 Occurrence. When a container which has been positioned at a Government stuffing facility is not released, by the Government within a reasonable time, to meet the scheduled sailing time, and date of the Carrier's vessel to which it is booked, thereby, precluding the container from being loaded on the vessel, the Government shall have the alternatives set forth below. In no event will the Government be liable for vessel demurrage or dead freight as a result of failure to release a container in time to meet a specified vessel sailing.

4.14.2 Load on the Next Vessel. The Government may allow the Carrier to load the container on the next vessel scheduled to the booked port of debarkation and pay the Carrier detention charges as set forth in the contract from the time of completion of loading of the vessel to which the container was originally booked to the time of the commencement of loading of the Carrier's next scheduled vessel to Ascension Island.

4.14.3 Unstuff the Container. The Government may order the Carrier to move the container to another place for unstuffing. The Government shall bear all costs of such movement and shall pay detention charges set forth in the contract, between the time of completion of loading of the vessel to which the container was booked and the release of the empty container.

4.14.4 Move to Another Place for Shipping. The Government may order the Carrier to move the container to another place, including another Carrier's terminal. The Government shall bear all costs of such movement. The Government shall return the container to the Carrier at the port of debarkation and shall pay the Carrier the applicable equipment leasing rate during the time it is in possession of the Government.

#### **4.15 CARRIER FAILURE TO LOAD CONTAINERS**

4.15.1 Occurrence. When a stuffed container is released by the Government within reasonable time to meet the scheduled sailing time and date of the Carrier's vessel to which it is booked and the container is delayed, through fault of the Carrier, thereby precluding the container from being loaded on the vessel, the Government shall have the remedies set forth below.

4.15.2 Load on the Next Vessel. The Government may order the Carrier to load the container on the next vessel scheduled to the same port of debarkation and hold the Carrier liable for liquidated damages equal to detention charges from time of completion of loading of the vessel to which the container was originally booked to the time of completion of loading of the Carrier's next scheduled vessel to Ascension Island.

4.15.3 Move to Another Shipping Place. The Government may take possession of the container and transport it by any means available to the Government. The Government shall return the container to the Carrier at the port of

debarkation. The Carrier shall be liable for liquidated damages equal to detention charges commencing at the time of completion of loading of the vessel to which the container was originally booked and ending when the vessel on which the container is loaded sails. The Carrier shall also be liable for freight, and any other expenses, paid by the Government for movement of the container over that freight which would have been paid to the Carrier if it had been loaded as originally booked.

4.15.4 Return the Cargo. The Government may elect to return the cargo, in which case the Carrier shall move the container to a place designated by the OO for unstuffing and shall bear all costs for such movement and unstuffing. The Government shall not be obligated to pay for use of the container. The Carrier shall be liable for liquidated damages in an amount equal to detention charges, commencing at the time of completion of loading of the vessel to which the container was originally booked and ending when the OO Officer notifies the Carrier of this course of action.

#### **4.16 NO FAULT FAILURE TO MEET SAILING**

4.16.1 Occurrence. If a container stuffed with cargo misses the sailing for which it is scheduled due to no fault of the Government or the Carrier, the Government shall have the remedies set forth below.

4.16.2 Load on the Next Vessel. The Government may order the Carrier to load the container on the next vessel scheduled to the same port of debarkation. The Government shall pay only for freight and usual charges.

4.16.3 Move to Another Shipping Place. The Government may order the Carrier to move the container to another place, including another Carrier's terminal. The Government shall bear all costs for such movement, and shall return the container to the Carrier at the port of debarkation.

4.16.4 Return the Cargo. If the Government elects to order the return of the cargo, the Carrier shall move the container to a place designated by the OO for unstuffing. The Government shall bear all costs of such movement.

#### **4.17 DELAY OF SCHEDULED SAILING**

4.17.1 Occurrence. If the scheduled sailing to which container cargo is booked is delayed, through no fault or failure of the Carrier, more than 96 hours (48 hours for container stuffed with refrigerated or perishable cargo) beyond either the departure time scheduled when the container was ordered, or the time the stuffed container arrived at the Carrier's terminal, whichever is later, the Government shall have the alternatives set forth below.

4.17.2 Container Release. The Government may allow the container to move on the delayed sailing.

4.17.3 Move to Another Shipping Place. The Government may order the Carrier to move the container to another place, including another Carrier's terminal. The Government will bear all costs for such movement, including removal of the container from the vessel and placement on a chassis. The Government shall return the container to the Carrier at the port of debarkation.

4.17.4 Return the Cargo. If the Government elects to order the return of the cargo, the Carrier shall move the container to another place designated by the OO for unstuffing. The Government shall bear all costs of such movement, including removal of the container from the vessel.

#### **4.18 STORAGE CHARGES**

When the Carrier fails to pick-up a container from the Government facility within the time period specified in paragraph 2.8.3, the Carrier shall be liable for payment of storage charges computed at the detention rates for each 24-hour period, or pro-rata portion thereof, from expiration of the time.

#### **4.19 COMMENCEMENT AND TIME STANDARD OF DELIVERY TRANSPORTATION**

When the Carrier fails to commence or meet the time standard of inland delivery transportation within the specified time period, the Carrier shall be liable for payment of liquidated damages, computed at the rates for detention charges for each 24-hour period, or pro-rata portion thereof, in excess of the time period specified at paragraph 2.7.6 Inland Delivery, in the contract, excluding time lost due to delay in commencing delivery pursuant to a request by the OO, labor disturbances, or fault or failure of the Government.

#### **4.20 TRANSSHIPMENT OR RELAY**

4.20.1 Policy. The Carrier shall not transship or relay cargo, containerized or breakbulk, unless it has received written permission to do so from the OO at the time of booking. The Carrier's request for permission shall include notice of the extent to which it will transship or relay the container between vessels (whether its own or other Carriers') and of the flag of the vessels involved. Transshipped or relayed containers shall be loaded aboard the first available vessel sailing from the port of transshipment or relay. The Carrier shall immediately notify the MTMC representatives at the ports of loading, transshipment or relay, and destination of the name of the vessel and/or Carrier and estimate time of arrival at destination.

4.20.2 Foreign Flag Vessels. No foreign flag vessel will be used for any portion of the carriage between the ports of loading and discharge unless the use of such vessel has been disclosed to and approved by the Director of JTMO or his/her designee prior to booking, or unless delivery to the port of discharge on the U.S. flag vessel scheduled to carry the container to the port is prevented by a casualty to the vessel that precludes its call at the port of discharge within a reasonable time and the Director of JTMO or his/her designee has approved transshipment to the foreign flag vessel. No freight shall be due for any transportation wholly or partially on a foreign flag vessel in violation of this paragraph.

4.20.3 Notification of Arrival. When delivery of cargo is made by a transshipment or relay vessel, the Carrier will notify the COR of the impending arrival of the cargo at the port of final destination, and will include in such notification, the name, estimated time of arrival, and flag or registry of the ship in which it will arrive; the Carrier's name, the ship and voyage document number to which the cargo was originally manifested; the container number, if applicable; and the names and flags of registry of any ship utilized for intermediate transshipment or relay.

#### **4.21 DIVERSION FOR THE CONVENIENCE OF THE GOVERNMENT**

Upon written direction by the Contracting Officer, the Carrier may route or divert its vessel, for the convenience of the Government, to a port of loading or discharging not on the route for which rates are quoted in CARE-SM II System. The written direction shall reflect the special routing or diversion and state the agreed additional freight, if any, to be paid by the Government for such special routing or diversion.

#### **4.22 TRANSFER OF CONTAINERIZED CARGO**

The Carrier shall not transfer or transload cargo from one container to another without the authorization of the OO, except when such transfer is required to safeguard the cargo during the continuation of the movement. When cargo is transferred from the original container, the Carrier shall immediately so notify the MTMC activities having cognizance over the loading and discharge ports. Such notice shall contain the serial number and seal number of the original container, and of the container to which cargo was transferred, the place where the transfer occurred and the reason for the transfer. When the container to which the cargo was transferred differs in internal cubic capacity from the original container, freight shall be based upon the cubic capacity of the original container.

#### **4.23 GOVERNMENT DRAYAGE/LINE-HAUL**

If the booking terms require delivery of the container to the Government at the Carrier's terminal at the CONUS port of discharge, the Carrier's obligation under this Contract shall terminate at the time the container with chassis is hooked to the Government tractor or at 0001 hours after the container has been discharged from the vessel, placed on a chassis, cleared for line-haul or drayage by all applicable agencies of the local Government, including Customs, and the OO has been notified that the container is ready for line-haul or drayage, whichever occurs first.

#### 4.24 TIME

4.24.1 Free Time Allowed. The total amount of free time in CONUS will be ten (10) days. At Ascension Island, total free time shall be the time between delivery of a container and arrival of the Carrier's next vessel.

4.24.2 Commencement of Free Time. Time shall commence to run at 0001 hours local time after the container is physically tendered for delivery.

4.24.3 Running of Time. Time shall not run during any Saturday, Sunday, or locally observed holiday at the place the container is located. Time shall run during any period when clearance by local government agencies is delayed due to the non-availability of documents required for such clearances which are furnished by the Government, provided, that the container is otherwise ready for line-haul/drayage and the OO has been notified of the unavailability of such documents. Time shall, when such delay is requested by the Government, run during the period of delay prior to commencement of inland delivery.

4.24.4 No Running of Time. Time shall not run during any period containers are held due to local labor disturbances.

4.24.5 Cessation of Time. Time shall cease to run at 2400 hours on the day the Carrier is notified that the container is released or when the container is returned to the Carrier, whichever is earlier.

4.24.6 Delivery at Carrier's Terminal. When the OO elects to take delivery of containers at the Carrier's Terminal at the port of discharge, time shall start to run when the container with trailer is hooked to the Government tractor.

4.24.7 Refrigerated Containers. The Carrier is responsible for ensuring that there is enough fuel to sustain refrigerated containers during the free time allowed under this agreement. This fuel shall be provided at the Carrier's expense.

#### 4.25 DETENTION

4.25.1 Incurrence. In the event the Government holds the Carrier's container longer than the free time allowed, the Government shall pay detention charges as set forth in the Rate Rules.

4.25.2 Computation of Detention. Detention charges will be paid at the rates set forth below for each 24 hour period of time, or pro-rata portion thereof, beyond the total allowed free time that the containers are held by the Government. No detention charge will be incurred for time spent in stuffing containers. Rates are expressed in dollars and cents and apply for containers with or without chassis.

4.25.3 Refrigerated Containers. When Government caused delay of a refrigerated container results in payment of detention, the Carrier shall be reimbursed for fuel consumed during the detention period. The compensation payable by the Government will be at the Carrier's actual cost including labor and materials

### 5. SHIPPING INSTRUCTIONS

#### 5.1 CONTAINER IDENTIFICATION

Containers shall be clearly marked to indicate the name of the Carrier. Leased containers utilized under this Contract shall have the name of the Carrier, affixed with stencils or stickers, in letters of not less than three (3) inches in height. As a minimum, such identification will be affixed to each end of a leased container.

### 6. INSPECTION OF SERVICES COMMERCIAL

## **6.1 RESERVED**

## **6.2 QUALITY ASSURANCE PROGRAM (QAP)**

The Government will monitor the Carrier's performance under this Contract through its Quality Assurance Program (QAP), which will consist of continuing evaluation of all services including documentation provided by the Carrier. The Quality Assurance Program does not place any additional requirements on the Carrier. The ACO shall issue administration instructions for this program. A copy of the QAP Performance Requirements Summary (PRS) is incorporated. To the extent that any conflict may arise between this plan and the substantive provisions of RFP-DAMT01-01-R-0188 and the resultant contract(s), then the substantive portions of the RFP and the resultant contract(s) shall apply.

## **6.3 QUALITY COUNCIL**

**6-3.1 Council Meetings** - In order to identify and resolve potential operational problems and to achieve continuous process improvement, a Quality Council shall be established. Quality Council members may include representatives of the carrier, Ocean Cargo Booking Office (OCBO), Ocean Cargo Clearance Authority (OCCA) and effected Shipper services, as well as the Administrative Contracting Officer (ACO) and Ordering Officer (OO). The Quality Council shall meet on a quarterly basis to identify, monitor, and recommend solutions to operational problems arising during the term of the contract. Recommendations for process improvement will be elevated to the Procuring Contracting Officer or his/her designated representative and the designated carrier representatives for consideration, approval, and negotiation of contract modifications (if applicable).

## **7. DELIVERIES OR PERFORMANCE**

**7.1 EFFECTIVE DATES** This Contract shall be in effect for all cargo received by the Carrier or its agent for sailings on or after 0001 hours local time 1 January 2002, and shall remain in force for all cargo received by the Carrier or its agent for all sailings scheduled on or before 31 December 2002, for the first (1) year base period.

## **7.2 LIQUIDATED DAMAGES**

### **52.211-11 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)**

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay or time specified in the Contract the sum(s) as specified elsewhere in the Contract with the exception of Contractor reporting which shall be payable at the sum of \$50.00 per day per report until submitted and for late vessel calls or excess transit in breach of Section 2.1, the contractor shall pay the Government the sum of ONE THOUSAND DOLLARS (\$1,000.00) for each calendar day or part thereof of delay.

(b) Alternatively, if delivery or performance is so delayed, the Government may terminate this Contract in whole or in part under the Default - Fixed Price Supply and Service clause in this Contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination clause.

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default- Fixed Price Supply and Service clause in this Contract.

## **7.3 RESERVED**



## **8. USE OF GOVERNMENT TERMINALS**

### **8.1 SERVICES**

When the Carrier calls to load or discharge containers or breakbulk cargo at government facilities, if requested by the Carrier, the Government shall make available such services and materials as may be required to permit the Carrier to perform with dispatch its responsibilities under this Contract in connection with the loading or discharging of cargo. The Government shall provide necessary husbanding services to the vessel while it is at the facilities. The Carrier shall pay the Government, represented by the agency operating the facilities, for such services or materials in accordance with schedules established by that agency.

### **8.2 SHIFTING DOCKS**

Within a vessel's port of call, the COR may require the vessel to call at, or shift to a particular dock wharf, place or open roadstead at which the vessel can lie always safely afloat at any time of tide, or at which, in the judgment of the Master, the vessel may lie safely aground, and to and from which the vessel may safely proceed when the aggregate of the cargo to be loaded or of the cargo to be discharged at such location is 300 measurement tons or more. If the COR orders such a call or shift and less than 300 measurement tons of cargo are loaded or discharged, the direct costs of such shift shall be reimbursed by the Government. Nothing herein shall be construed as a warranty by the Government of berth, or approaches thereto, at facilities owned or operated by or for the Carrier or at other commercial facilities normally utilized by ships of the size as the Carrier's vessel to load and discharge cargo.

### **8.3 CUSTOM OF THE TRADE**

Wherever the standard of performance by either party is not provided under the provisions of this Contract, the "Custom of the Trade" shall be used as a standard of performance. This phrase shall mean the established practice generally accepted by the trucking, rail and marine shipping industries providing transportation services in the geographic trade covered by this Contract.

### **8.4 SECURITY**

If the Government notifies the Carrier that the employment or the continued employment of the Master or any member of the crew is prejudicial to the interests or endangers the security of the United States of America, the Carrier shall make any changes necessary in the appointment(s). Any costs to the Carrier occasioned by such changes shall be reimbursed by the Government.

### **8.5 SAFETY IN LOADING AND DISCHARGING OF CARGO**

The Carrier shall comply with all applicable provisions of Public Law 91-596, 84 Stat. 1590 (approved December 29, 1970) known as the Occupational Safety and Health Act of 1970 (29 USC 655, ex. seq.) and with the standards promulgated thereunder by the Secretary of Labor for Safety in loading and discharging of cargo.

### **8.6 POSITION REPORTS**

When specifically requested by the OO or the Contracting Officer Representative (COR), the Carrier shall furnish the Government with the daily noon position of vessel's serving this Contract.

### **8.7 SUBSTITUTION**

If the Carrier wishes to materially change its service or to substitute another vessel or other equipment for the vessel or equipment initially offered for service, the Carrier must submit to the Contracting Officer within 30 calendar days of the anticipated change a written request detailing such change and the impact on the service provided. The Carrier shall not implement such a change without the written consent of the Contracting Officer.

## 8.8 TASK AND DELIVERY ORDER OMBUDSMAN

In accordance with FAR PART 16.505(b)(5) which states “Task and Delivery Order Ombudsman. The head of the agency must designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency’s competition advocate.” The following information is incorporated:

Task and Delivery Order Ombudsman:  
 Frank A. Giordano  
 Department of the Army  
 HQ, Military Traffic Management Command  
 ATTN: MTAQ  
 200 Stovall Street  
 Alexandria, VA 22332-5000  
 703-428-2016, (F) 703-428-3364  
[giordanof@mtmc.army.mil](mailto:giordanof@mtmc.army.mil)

## 9.0 GLOSSARY -

As used throughout this Contract, the following terms shall have the meaning as set forth below:

### 9.1 Abbreviations/Acronyms

ACCT	-	Account
ACO	-	Administrative Contracting Officer
CAR	-	Carrier
CAT	-	Category
CFR	-	Code of Federal Regulations
CDRMTMC	-	Commander, Military Traffic Management Command
COGSA	-	United States Carriage of Goods by Sea Act
COMSC	-	Commander, Military Sealift Command
CONUS	-	Continental United States
CTA	-	Central Technical Activity
DOD	-	Department of Defense
DTS	-	Defense Transportation System
DFARS	-	Defense Federal Acquisition Regulation Supplement
EDOB	-	Estimated Date on Berth
ETA	-	Estimated Time of Arrival
ETD	-	Estimated Time of Departure
FEU	-	Forty Foot Equivalent Unit
FCL	-	Full Container Load
FAR	-	Federal Acquisition Regulation
FIO	-	Free In and Out
GOVT	-	Government
GBL	-	Government Bill of Lading
GOH	-	Garment on Hangers
LB(S)	-	Pound(s)
LT	-	Liner Terms
L/T	-	Long Ton (2,240 Pounds)
MBM	-	1,000 Feet Net Board Measure
MSC	-	Military Sealift Command
MT	-	Measurement Ton (40 Cubic Feet)
N/C	-	No Charge
NO(S)	-	Number(s)

OCONUS	-	Outside Continental United States
PCO	-	Procurement Contracting Officer
POV	-	Privately Owned Vehicle
RDD	-	Required Delivery Date
REEFER	-	Refrigerated Container
REV	-	Revised
RFP	-	Request for Proposals
RI-		Route Index
RLD	-	Required Loading Date
SA	-	Shipping Agreement
ST	-	Short Ton (2,000 Pounds)
TEU	-	Twenty Foot Equivalent Unit
TGBL	-	Thru Government Bill of Lading
USC	-	United States Code
VEH	-	Vehicles

## 9.2 Definitions

ADMINISTRATIVE CONTRACTING OFFICER (ACO) – Military Traffic Management Command, Transportation Acquisition Division, Alexandria, Virginia 22332-5000, or his designee.

AGREEMENT - See "Contract".

AIRCRAFT, UNBOXED - Includes all vehicles designed primarily for flight, unboxed and completely or partially set up own wheels, pontoons, runners or special cradles.

BAGGED CARGO - Bagged cargo is defined as any commingling, homogeneous material shipped in cloth, paper or plastic sacks or bags. Such material may consist of, but is not limited to, dry chemicals, coal, ore, fertilizer, cement, charcoal, coke, mortar, salt, grains, coffee, sugar, peanuts and fruits and vegetables not requiring refrigeration.

BERTH TERM - See "Liner Terms".

BOATS - Includes all craft in excess of 35 feet in length assigned exclusively for use on or under water and may or may not include a cradle for stowage.

BREAKBULK CARGO - Cargo that is not containerized.

BULK CARGO - Dry or Liquid Cargo (such as grain, ore, coal, chemicals, oil, liquid latex, etc.) which is not subject to mark or count, shipped in fluid or loose state and not packaged for ocean carriage in any manner.

CAR CARRIER - A trailer/container of open framework designed for carriage of automobiles or other unboxed vehicles.

CARGO NOS - Cargo not otherwise specified i.e., all dry cargo other than reefer and vehicles. Dry cargo refers to mixed or straight loads of the commodities listed in Military Standard Transportation and Movement Procedures (MILSTAMP).

CARGO TRAILER - See "Van".

CARGO UNIT - Two or more pieces of cargo received by Carrier at the same time which has the same consignor and consignee.

**CARRIER** - Any Carrier awarded a Contract pursuant to RFP RFP-DAMT01-01-R-0188, including its agents and subcontractors. The term "Carrier" is used interchangeably with the term "Contractor."

**CHARTERER** - See "Government".

**CHASSIS** - A platform wheeled unit equipped with running gear and front-end support on which a container is placed for transport.

**COMMERCIAL ZONE** - The pickup and delivery limits of cities, ports and municipalities in the United States as defined by the Surface Transportation Board and published in 49 CFR Part 1048, on the date service is provided by the Carrier.

**COMMON CARRIER** - (Shipping Act of 1984 (46 U.S.C. App. 1701(6)) - A person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and foreign country for compensation that:

- (a) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and,
- (b) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States in a foreign country.

**CONSOLIDATION** - Practice of consolidating many less-than-container load cargo in order to make container load movements.

**CONTAINER** - A cargo conveyance which confines and protects the cargo from loss or damage, can be handled in transit as a unit and can be mounted and secured in or on marine, rail or highway equipment. Common types of containers are weatherproof, dry enclosed, refrigerated, van, tank, non-weatherproof, open top, car Carrier, high cube, and flatracks or platforms.

**CONTAINER DETENTION** - Government ordered delay in commencement of drayage/line-haul (container staging) or Government delay in unstuffing of containers at destination when total delay exceeds total free time allowed.

**CONTAINERIZABLE CARGO** – All cargo which can be physically loaded in or on a container.

**CONTRACTING OFFICER** - A Contracting Officer within the scope of that definition in Federal Acquisition Regulation 52-202-1, who has been appointed or designated as such by the Military Traffic Management Command. May also be referred to as the Procuring Contracting Officer (PCO).

**CONTRACTING OFFICER REPRESENTATIVE (COR)** - Appointed in writing by the ACO. Responsible for, but not limited to, the following: Designates Quality Assurance Evaluators, monitors the contractor's performance in accordance with the Quality Assurance Surveillance Program, ensures contractor's compliance with reporting requirements, provides data for government reports, verifies/certifies invoices, and review of contractor's request for equitable adjustments.

**CONTRACT** - This document which contains the Contractual terms pursuant to which a Carrier agrees to accomplish transportation of such lawful cargo as may be tendered by the Government.

**CONTRACT CARRIER** - Any person who engages in vessel operating ocean transportation of passengers or cargo in the foreign commerce of the United States for compensation under a continuing contract with the Government for a specified period of time for the furnishing of such ocean transportation services through the dedication of space in its vessels, and for which the carrier assumes responsibility for that transportation from the port or point of receipt to the port or point of destination.

CONTRACTOR - See "Carrier".

CONTINENTAL UNITED STATES (CONUS) - Forty-eight contiguous states of the United States of America.

CUSTOM OF THE TRADE – The established practice generally accepted by the trucking, rail, and marine shipping industries in the geographic area where the service is provided.

DAYS - Shall mean calendar days unless specified otherwise.

DEAD FREIGHT - Liability to pay for space booked but not used.

DECK CARGO - Includes all cargo stowed in open spaces on deck except Hazardous Cargo, which, in accordance with U.S. Coast Guard rules, must be stowed on deck.

DETENTION - Charges assessed against the Government for delaying the release of Carrier equipment beyond allowed free time.

DISCHARGING - The physical movement of cargo/container from the place of stowage on board a vessel to the pier.

DIVERSION - A change in the booked destination of a loaded container after transit has commenced, but before the container has commenced final drayage/linehaul from the port of discharge.

DRAYAGE - The movement of cargo/container between the Carrier's terminal at the port where the cargo/container is loaded to or discharged from the vessel and another place within the commercial zone or modified zone of that United States port city or within a ten mile radius of that city's limits, by means other than the Carrier's principal vessels, such as by highway or railway.

DRY CONTAINER - A completely enclosed weatherproof container.

EXPLOSIVES - Includes all Class I explosives (49 CFR Section 173.50) for which specialized container identification and handling is required under Title 49, Part 171 et seq. Code of Federal Regulations. This category shall not include small arms ammunition and other items included in definitions of "Cartridges for Weapons," "Cartridges for Weapons, Inert Projectile," and "Cartridges, Small Arms" set forth at 49 CFR 173.59.

FLATCAR - A railroad car without weatherproof sides or top.

FLATRACK (PLATFORM) CONTAINER - A container without weatherproof sides and/or top. May have rigid or collapsible ends and can be end loaded or top or side loaded.

FREE-IN-OUT - Loading and discharging services are to be performed by the Government.

FUTILE EFFORT - The good faith effort of a Carrier to accept cargo which is futile due to fault of the Government. Does not include the instance in which the Carrier spots a container for a particular booking which does not materialize, but is able to utilize the spotted container for another booking without returning the container to its place of origin.

GENERAL CARGO - All containerized dry cargo other than refrigerated cargo, cargo in tank containers, and vehicles. Dry cargo refers to shipments of straight or mixed loads of the commodities listed in the Military Standard Transportation and Movement Procedures. General cargo shall also include small arms ammunition

and small arms as defined under EXPLOSIVES and SMALL ARMS, respectively. General cargo does not include excepted commodities set forth in Section H.

GOVERNMENT - The United States Government, its agents and Contractors, party to this Contract, and the consignees, their agents and Contractors unless used in a context to refer to another government such as a foreign or local government. Does not include Contractors party to this Contract. Ordering activities authorized under this Contract are included.

GOVERNMENT TRACTOR - A tractor used by the Government to transport the Contractor's containers placed on chassis or over-the-road trailers.

HAZARDOUS CARGO - A substance or material including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce and which has been so designated.

INOPERABLE - Not capable of being operated.

JOINT TRAFFIC MANAGEMENT COMMAND - 200 Stovall Street, Room 10S07, Code MTOP-J, Alexandria, VA 22332-5000.

LINEHAUL - The movement of a container between the Carrier's terminal at the port where the container is loaded to or discharged from the vessel and another place outside the commercial zone or modified zone of that United States port city or beyond a ten mile radius of the city limits by means other than the Carrier's principal vessels, such as by highway, railway, canal or river, or in specific instances by ferry or bargeship system.

LINER TERMS - The Carrier assumes all responsibilities and cost for the cargo from the port or point where the cargo is receipted for by the Carrier to the destination port or point where the Carrier makes the cargo available to the consignee.

LOADING - The physical movement of cargo/container from the pier to place of stowage on board a vessel.

LOW COST CARRIER - The Carrier which offers the lowest total cost for all services ordered in connection with handling and movement of a particular lot of cargo from origin to final destination, taking into account the density and stowage characteristics of the particular lot of cargo in relation to the types, sizes, configurations and weight carrying capacities of containers available for the movement.

MAIL - Includes all classes and types of postal matter delivered by the U.S. or military Postal Service.

MAIL EQUIPMENT - Includes sacks, pouches, and bags used for carriage of mail and locks or other devices used for sealing mail bags, pouches, sacks or containers.

MILITARY TRAFFIC MANAGEMENT COMMAND (MTMC) - Commander, Military Traffic Management Command, 200 Stovall Street, Alexandria, VA 22332-5000.

MILSTAMP - Military Standard Transportation and Movement Procedures.

OCONUS - Outside Continental United States.

OPEN TOP CONTAINERS - A container without a permanently affixed metal top. Top is a removable tarpaulin, which is supported by roof bows.

ORDERING ACTIVITY - Those military organizations, which have been properly authorized by the PCO to place orders under this contract.

**ORDERING OFFICER** - Appointed in writing by the Chief of Acquisition, MTMC, with a copy provided to the Carrier. Responsible for, but not limited to, the following: Books cargo and issue shipping orders, samples bookings for low cost, monitors cargo allocation, recommends addition/deletion of routes/services, authorizes substitution of equipment and authorizes staging.

**OVERSIZED DIMENSIONAL CARGO** – Cargo meeting all of the criteria stated in Section H-5.3.

**OVERSIZED BREAKBULK CARGO or RO-RO Cargo** - Cargo that has any one dimension over twenty (20) feet long, more than 8 feet wide or over 8 feet 6 inches in height, and as determined by the OO, requires special handling equipment for loading aboard or discharging from a vessel because of that cargo's atypical size. All wheeled or tracked vehicles regardless of size are excluded from this definition. Extra length charges are not applicable to cargo defined as oversized cargo.

**OVERSIZED CONTAINER CARGO** - Cargo which when stowed aboard a cellular container ship would require more space than the space needed to load a 20 feet long, 8 feet 6 inches high, 8 feet wide dry container, i.e., would require more than one (1) container space of this size. Exceptions to this definition are described as "Over Dimensional Cargo," as defined as oversized cargo.

**OVERTIME DIFFERENTIAL COST (ODC)** - Overtime Differential Cost is the difference in cost to perform cargo handling services during regularly scheduled working hours (as defined by the existing terminal tariff) and to perform the same services during non-regularly scheduled (overtime) working hours. For the purpose of this contract, ODC will apply in the Ascension Island when it is incurred by the Government as a result of an express request by the vessel owner or his agent to perform such services on an overtime basis. ODC may include, but is not limited to, overtime costs for loading/unloading cargo to and from the vessel, bringing cargo to and taking it alongside the vessel within the terminal area, documentation and other administrative services, and extra wages or salary rates or charges related thereto (which may include the portion of the sum paid for pensions, health and welfare, payroll taxes and other fringe benefits in connection with work performance of the ordered services.

**OWNER** - See "Carrier".

**PLACE DESIGNATED BY THE CONTRACTING OFFICER** - Places within the commercial zone of United States ports or inland cities, and places within a ten-mile radius of the city limits of any U.S. port or inland city or limits of other places designated in the Schedule of Rates.

**PLATFORM** - A trailer/container with no sides or top, but only the floor.

**PROCURING CONTRACTING OFFICER (PCO)** – A warranted contracting officer who is responsible for, but not limited to, the following: appoints and trains the contracting officer representative (COR), issues administrative modifications, analyzes contractor claims, evaluates the contractor's performance, and provides reports on the contractor's performance. The PCO is located at HQ, Military Traffic Management Command, Office of the Principal Assistant Responsible for Contracting, Transportation Acquisition Division, Intermodal Branch (MTAQ-JI), Room 12S45, 200 Stovall Street, Alexandria, Virginia 22332-5000, (703) 428-2484 or FAX (703) 428-3362. The PCO has been authorized and designated responsibility for this contract.

**RAIL INTERMODAL EQUIPMENT** - A unit for transporting commodities in trailer or container on freight-car service from point to point, constructed in such a manner that it may be mounted and secured on a car, chassis or bogie for the purpose of such locomotives.

**RECEIVING ACTIVITY** – Place, other than the Carrier's terminal, designated by the OO for receipt of cargo/containers from the Carrier for stuffing or unstuffing.

**RECYCLABLE MATERIAL SERVICE.** The Carrier's recyclable material service shall consist of transporting such materials in 20 and 40 foot dry containers from Ascension Island to CONUS. The Carrier will be compensated for this service in accordance with the rates set forth in Section B of the contract.

#### REFERENCES

All references in this Contract to "Master" or "Crew" or other ship's personnel shall be deemed to be references to "Carrier's Representative" except when the context precludes such reading.

**REFRIGERATED CARGO** - Cargo requiring controlled temperature storage during transportation and storage.

a. Non-self-sustaining. A refrigerated container, which requires a power or fuel source, not mounted on the reefer or its chassis, to operate the refrigeration unit.

b. Self-sustaining. A refrigerated container which does not need an external power or fuel source, and upon which a self-contained power unit is mounted, either on the container or its accompanying chassis. The container is self-sustained only while the power unit and its fuel source is mounted. If the power unit or fuel source is removed or the power unit cannot be operated for reasons other than maintenance, the reefer is non-self-sustaining. However, if the Government chooses not to operate the power unit (if operable), the reefer is considered self-sustaining.

**REFRIGERATED CONTAINER** - A weatherproof container used for the carriage of controlled temperature cargo which is properly insulated against the effects of temperature outside the container and is equipped with mechanical, thermostatically temperature controlled air circulation or air exchange cooling equipment with venting capability capable of providing temperature protection to cargo (between plus 75 degrees and minus 10 degrees Fahrenheit).

a. Non-self-sustaining. A refrigerated container which requires a power or fuel source, external to the refrigerated container or its chassis (e.g., independent power source such as an electrical plug), to operate the refrigeration unit.

b. Self-sustaining. Refrigerated container which does not need an external power or fuel source, and upon which a self-contained power unit is mounted, either on the container or its accompanying chassis. The container is self-sustained only while the power unit and its fuel source is mounted. If the power unit or fuel source is removed or the power unit cannot be operated for reasons other than maintenance, the reefer is non-self-sustaining. However, if the Government chooses not to operate the power unit (if operable), the reefer is considered self-sustaining.

**REGULARLY SCHEDULED SAILINGS** - Sailings at regular intervals maintained between the same port ranges and consisting of regular arrivals and departures along an established route.

**REQUIRED DELIVERY DATE** - Date by which cargo must reach the ultimate consignee as determined by the OO.

**RESPOT SERVICE** - Service that consists of moving a container for stuffing from the initial point of delivery within a facility to another point within that facility.

**SINGLE FACTOR RATE** - A single rate, which includes all segments of the international transportation move from origin to destination.

**SMALL ARMS** - Small arms includes rifle and shoulder fired grenade launchers, handguns, individually operated weapons which are portable or can be fired without special mounts or firing devices, light automatic weapons up to and including .50 caliber, mortars up to and including 81 mm, recoilless rifles up to and including 106 mm, rocket launchers, and shoulder fired weapons.

**SPOT** - The placement of a container for stuffing or stripping.



**STRIPPING** - The process of unloading a container.

**STUFFING** - The placement of cargo into a container, including any necessary chocking, bracing, or dunnaging.

**SURFACE TRANSPORTATION BOARD (STB)** - The agent of Congress designated to implement the Interstate Commerce Act which regulates rates, rules and practices of rail transportation lines engaged in interstate traffic, motor carriers, common and contract water carriers operating in domestic trade, and freight forwarding companies.

**TALLY** - Supervise and make accurate, appropriately documented records of cargo being loaded and unloaded, time received, and condition on arrival.

**TANK CONTAINER** - A weatherproof container used for transporting bulk liquids.

**TENDER** - Cargo physically accepted by the carrier for loading on its vessel for a particular voyage, or released by the Government to the carrier for loading on its vessel for a particular voyage.

**TRACTOR** - A motor vehicle designed primarily for hauling containers/trailers over the road.

**TRAILER** - A vehicle designed without motive power, to be drawn by another vehicle

**TRANSSHIPMENT** - Service by which one ocean Carrier serving a port of origin by direct vessel call and another such Carrier serving a port of destination by direct vessel call provide transportation between such port via an intermediate port served by direct vessel call of both Carriers, and at which cargo will be transferred from one Carrier to the other.

**UNSTUFFING** - See "Stripping."

**VAN** - A motor vehicle permanently mounted on undercarriage and wheels.

**VEHICLES** - Includes all types of land or amphibious vehicles set up on its own wheels or tracks, whether or not self-propelled, but exclude railroad locomotives.

**WEIGHT CARGO** - Cargo for which, by virtue of its weight, special permits or special handling is required by law or regulation.

**WHARFAGE** - The charge for the use of a wharf or dock.

**WHEELED OR TRACKED VEHICLES (UNBOXED AND CONTAINERIZABLE)** - Includes all types of unboxed, land or amphibious equipment or conveyances, set up on wheels or tracks, whether or not self-propelled, but excluding railroad locomotives and set up railroad rolling stock. Vehicles shall be freighted on the basis of extreme dimensions as offered for shipment.

**WORKING DAY** - Excludes weekends and locally observed holidays

## 1.0 RATE RULES

The Administrative Contracting Officer (ACO) who shall perform Contract administration for this Contract is the Military Traffic Management Command, at (703) 428-3303, fax number (703) 428-3362.

### 1.1 SHIPPING ORDER

When transportation services are ordered under this Contract, a shipping Order substantially in the form of the Clearance Order/Shipping Order (JTMO Form 4612/1) will be issued by the Government. The Government will prepare all necessary papers including vessel papers or manifests listing the cargo stowed in containers aboard the vessel. Such papers, including vessel papers or manifests, shall be receipted by the Carrier or his agent, and shall be evidence of ownership. These documents and the Shipping Order shall be deemed to be an Order within the meaning of the Ordering Clause (FAR 52.216-19). The OO shall provide the Carrier with written notice of the Government activities authorized to issue Shipping Orders.

### 1.2 CONTAINER SIZE ORDERED/PROVIDED

When ordering containers from the Carrier, the OO will specify the type, length, height, and capacity of the container required. The Carrier shall not furnish a container of a different type or cubic capacity than that ordered.

### 1.3 APPLICATION OF RATES

1.3.1 Expression of Rates. All rates appearing in CARE-SM II System are stated in U.S. dollars and cents per the applicable unit of measure.

1.3.2 Containerized Cargo. Containers stuffed with general cargo (including mail/mail equipment), refrigerated cargo, vehicles, controlled atmosphere cargo; hazardous material cargo, flatrack service and recyclable cargo shall be freighted at the appropriate rate(s) stated in CARE-SM II System.

1.3.2.1 Containers stuffed with vehicles shall be freighted at the applicable measurement ton rate stated in CARE-SM II System applicable to the manifest measure of the vehicles. Vehicles shall be freighted on the basis of extreme dimensions as offered for shipment not to exceed the maximum inside cubic capacity of the container. Containers stuffed with a mixture of both vehicles and general cargo shall be freighted at the general cargo per container rate.

1.3.2.2 Containers stuffed by the Carrier shall not exceed 24,000 pounds in load weight.

1.3.3 Vehicles - The Carrier will be compensated for the carriage of vehicles at the applicable rate per measurement ton multiplied by the actual manifest measure of the cargo.

1.3.4 Stripping, Sorting and Consolidation Charges - When ordered by the OO or their designated representative, stripping, sorting and consolidation services performed by the Carrier shall be paid in accordance with the rates set forth in CARE-SM II System.

1.3.5 Breakbulk Cargo. Breakbulk cargo shall be freighted by applying the applicable rate to the manifested measurement tonnage (MTON) of the cargo. Cargo booked, as breakbulk cargo will be so freighted at the MTON rate, regardless of whether containerized for the Carrier's convenience.

### 1.4 EXCEPTIONS TO GENERAL APPLICATION OF RATES

1.4.1 Carrier imposed weight restrictions. When a container is precluded from being utilized to its maximum capacity because of Carrier imposed restrictions which limit the weight carrying capacity below the maximum weight carrying capacity of the container, the cargo shall be freighted at the applicable measurement ton basic rate

applied to the manifest measure of the cargo applied pro-rata to useable carrying capacity (e.g., if the maximum capacity of the container is 20,000 lbs., but the restricted capacity is 15,000 lbs., the container will be freighted at 75% of its usual measurement ton rate). Container weight shall not exceed 30,000 pounds.

1.4.2 Government Furnished Containers. The Carrier's charges for through transportation of commercially acceptable Government containers will be ninety-five percent of the appropriate rate for that cargo commodity. In the event the Government at its own cost elects to procure new reefer/controlled atmosphere containers and provide them to the Contractor as Government furnished equipment (GFE), the Carrier's charges for through transportation of such GFE will be fifty percent of the appropriate rate for that cargo commodity. The Carrier's charges for empty Government containers shall be one-half the appropriate rate for that container type.

## 1.5 PAYMENT

1.5.1 Entitlement. Freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the Shipping Order or applicable amendments thereto. Freight shall consist of the sum of all payments due for services actually furnished in accordance with the Shipping Order calculated at the rates set forth in CARE-SM II System.

1.5.2 Submission of Invoices. Invoices shall be submitted in accordance with the Standard Billing Instructions. The Carrier shall submit properly certified invoices or vouchers for outbound/inbound shipments, detention and other authorized charges to Military Traffic Management Command, Deployment Support Command, 661 Sheppard Place, Third Floor, ATTN: WS2-3S, Fort Eustis, VA 22304. Invoices shall be submitted within six (6) months from date of shipment. Invoices received after that time will not be certified for payment and the Carrier waives any right to payment thereafter.

1.5.3 Determination of Delivery. Delivery of the stuffed container or breakbulk cargo, if inland delivery service required, at ultimate destination and accomplishment of the Shipping Order may, for purposes of payment of freight, be established either by a copy of a receipt signed by the consignee or its agent or upon certification of delivery by the OO based on information available within the Government. For purposes of payment of freight, delivery of container/breakbulk cargo shall be deemed to occur upon placement of the stuffed container at ultimate destination or upon expiration of two working days after the Carrier tenders the stuffed container/breakbulk cargo for delivery at the ultimate destination whichever occurs earlier. The Carrier may notify the paying activity of the date and time of the container arrival at ultimate destination for determination of the two working day basis for payment of freight.

1.5.4 Withholding of Payment. If, after delivery of the cargo or container and unstuffing by the Government, there is any damage to or shortage of cargo not definitely known to be the fault of the Government or its agents, and it is considered by the Contracting Officer that withholding of certain monies is necessary to protect the interests of the Government pending final determination of the amount of shortage or damage and the Carrier's liability therefor, the dollar amount of such shortage or damage may be estimated and withheld from sums owing to the Carrier by the Government under any Shipping Order. Likewise, the Government may recover overpayments of freight and may recover charges paid to the carrier for services and supplies.

1.5.5 Reimbursement. All charges and expenses incurred for the account of the Government as provided in this Contract and which are not paid directly by the Government or by the consignee shall be paid by the Carrier, which shall be reimbursed upon the presentation of properly supported invoices, including, but not limited to, Carrier's Interchange Receipt and COR certified invoices.

1.5.6 Payment. Unless otherwise provided herein, payment shall be made on the basis of freight earned as computed in accordance with paragraph 1.5.1. In accordance with the Prompt Payment Act, all payments earned on shipments will be made after a) receipt of a proper invoice, in accordance with the procedures outlined above, or b) evidence of delivery as described above, whichever occurred later. The failure of the Government to provide a proper manifest in a timely manner shall not preclude the Carrier from submitting a proper invoice upon delivery of cargo as set forth above.

1.5.7 Linehaul/Drayage All inland rates are stated in dollars and cents per manifested container size regardless of type and are applicable for drayage or linehaul services furnished by the carrier in conjunction with basic services provided.

1.5.8 Electronic Payment – Carrier Payment Automated fund transfer (AFT) is the required method of payment for this contract. Carrier not yet authorized AFT must provide bank and account information necessary to implement AFT.

1.5.9 MRM-15 alternate payment procedures. During the term of this contract, the (POWERTRACK), shipping instruction (EDI 304), plus carrier lift (EDI 315) reports will be the basis for effecting payment to Carriers. Electronic Carrier Payment, MRM15 Payment Procedures will be implemented 30 days from the effective date of the contract. The automated payment procedures require the awardee to become a certified PowerTrack carrier. The Government will reimburse the Carrier for any additional expenses that occur while using MRM-15 payment procedures. The POC at US Bank is Linda Paulson, 612-973-6437.

## 1.6 REFUNDS, REBATES AND CREDITS

The Carrier agrees that any refunds, rebates, credits or other amounts (including any interest thereon) accruing to or received by the Carrier under this Contract shall be paid by the Carrier to the Government to the extent that they are properly allocable to costs, expenses or reimbursements for which the Carrier has been reimbursed by the Government under the terms of this Contract.

## 1.7 AGREED COST RESPONSIBILITY

1.7.1 General. As a means of facilitating the administration of this Contract, the parties have agreed that certain items of cost anticipated as likely to arise in the performance of their respective duties under this Contract shall be listed. Determinations of responsibility for items of cost agreed by the parties under this Section are intended to be consistent with the substantive clauses of this Contract; provided however, in the event of conflict, the substantive clauses of the Contract shall prevail.

1.7.2 Responsibility of the Carrier. The Carrier is responsible for the costs associated with the following services:

1.7.2.1 Furnishing and maintaining containers and chassis in CONUS only.

1.7.2.2 For CONUS only, drayage of containers including: furnishing and maintaining tractors; furnishing drivers; CONUS delivery costs of movement of containers, including tractors and driver; highway, ferry, tunnel and bridge tolls; and user taxes.

1.7.2.3 All costs of the vessel operation and all CONUS port charges and other expenses charged to the carrier's vessel in conus ports.

1.7.2.4 Except for stevedoring and port handling straight time worked in Ascension Island all stevedoring costs and port handling costs of loading and discharging and preparation, including special cargo fire or security watch required by port regulations due to loading and discharging operations. And including any overtime-differential costs incurred by the Government at Ascension Island for Government stevedoring and terminal costs when overtime is ordered by the Contractor.

1.7.2.5 All CONUS container terminal costs including receipt of containers; marshaling of containers; and cleaning containers before stuffing and after unstuffing.

1.7.2.6 Taxes, dues, fees and other charges (including storage charges levied by governments, ports authorities, or wharfingers) on breakbulk cargo, on the containers, and on their contents, if any, except those charges which are payable by the Government.

1.7.2.7 Handling charges including terminal tariff handling charges according to the custom of the port; agency fees in connection with port clearance of cargo.

1.7.2.8 Compiling and reconciling the cargo documentation every Friday, prior to the sailing of the vessel with the Government.

1.7.3 Responsibility of the Government. The Government is responsible for the cost of the following services:

1.7.3.1 Respot of containers within a Government facility; supply point or vendor's plant.

1.7.3.2 Container stuffing and unstuffing including: labor employed; packing material and/or dunnage employed; preparing documentation; sealing the container; removal of packing material, dunnage and placards; and sweeping.

1.7.3.3 Miscellaneous dues, fees and charges including: cargo surveyor fees when services are ordered by the Government or when resulting from dispute between the Government and the Carrier resolved in favor of the Carrier; drayage or line-haul charges listed under 1.7.2 above when performed by the Government.

1.7.3.4 As they relate to any container and cargo charges, any vessel fees or port charge at Ascension Island shall be to the Government's account.

1.7.3.5 Any direct costs of any fines or charges incurred by the Carrier as a result of irregularities in papers supplied by the Government.

1.7.3.6 Additional personnel ordered by the Government including: Transportation and travel time of stevedore personnel when ordered by the Government for its account; overtime for customs, agriculture or public health officers provided for the convenience of the cargo, when requested by the Government.

1.7.3.7 Contaminated cargo costs including: Fumigation required solely because of contaminated Government cargo, including related costs and detention; crew overtime in connection with standby security watch when required by the OO during loading and discharging; crew wages, fringe benefits and related payroll tax when ship's crew are performing longshore work in cargo operations at the request of the terminal or by custom of the port including members of the steward's department required to prepare additional meals.

1.7.3.8 Handling charges including customs and other fees, dues and/or taxes charged to the cargo; harbor and quay dues charged to cargo based on local tariffs.

1.7.3.9 Cargo landing and wharfage charges including: Landing charges against cargo in accordance with the regulations of the port, including those billed by port authorities to the ship; and wharfage charged to military cargo.

1.7.3.10 Compiling and reconciling the cargo documentation every Friday, prior to the sailing of the vessel with the Carrier.

## 1.8 OFFEROR'S PAYMENT ADDRESS

If the offeror's payment address is different than that shown by the offeror in Block 17A. of the SF 1149, then the offeror should include such address in the proposal.

## 1.9 CONTAINER DETENTION CHARGES

Detention invoices must be submitted to the KO's representative designated to Certify such invoices no later than six (6) months from the date the empty container is returned to the Carrier. Detention invoices received after that time will not be certified for payment and the Carrier waives any right to payment thereafter.

A. DRY CARGO CONTAINER (includes closed containers, open top containers, flat racks, car carriers, any of the above with chassis, and chassis alone)	FIRST 3 <u>DAYS</u>	NEXT 3 THREE- <u>DAYS</u>	<u>AFTER</u>
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20 FT and over	\$20.00	\$27.00	\$34.00
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B. REFRIGERATED CONTAINER & TANK CONTAINER (includes container with chassis)

20 FT and over	\$60.00	\$75.00	\$90.00
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C. POV & MILITARY VEHICLE PER UNIT PER DAY \$15.00

**ATTACHMENT 1 - CARGO PROJECTION****ANNUAL**

The figures below represent an annual projection expressed in Measurement Tons (M/T) of 40 cubic feet for breakbulk cargo and 20 foot containers. JTMO does not guarantee the completeness or accuracy of the projection, it is provided for informational purposes only

**20 FOOT**

DRY	368
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REEFER	30
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FLATRACKS	12
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OPEN TOP	8
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RETROGRADE	380
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HAZARDOUS WASTE/MATERIAL	72
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BREAKBULK	1,000 M/T
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TRANSLOADING	1
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IDIQ Quantities: Minimum Guarantee

85 twenty foot equivalent units  
per round trip voyage every  
60 days (see 4.4.2)

Maximum

Full cargo capacity  
of the vessel(s) offered  
service (see 4.7)

**ATTACHMENT 2 - AVERAGE CONTAINER/CHASSIS INTERNAL CUBIC CAPACITIES**

Size and Type	Containers L X W X H	Average MT
20 Foot, Dry (low cube)	20'x 8'x 8'	27
20 Foot Dry	20'x 8'x 8'6"	29
20 Foot Reefer	20'x 8'x 8'6"	27



